

Concordat of Nablus – 1120¹

<u>Signatories:</u>	<u>Position:</u>
Warmund,	Patriarch of Jerusalem
Baldwin II,	King of Jerusalem
Ehremar,	Archbishop of Caesarea
Bernard,	Bishop of Nazareth
Ansquitinus,	Bishop of Bethlehem
Roger,	Bishop of Ramla
Guildoinus,	abbot-elect of St. Mary of the Valley of Josaphat
Peter,	abbot of Mount Tabor
Achardus,	prior of the Temple
Arnaldus,	prior of Mount Sion
Girardus,	prior of the Holy Sepulchre
Pagan,	chancellor of Jerusalem
Eustace Grenier,	Lord of Caesarea and Sidon, constable of Jerusalem
William de Buris,	Prince of Galilee
Barisan,	constable of Jaffa
Baldwin,	Lord of Ramla

After the signatures of the participants at the Council of Nablus were written the 25 canons which are summarized below:

The canons begin with the reasons for calling the council: Jerusalem had been plagued with locusts and mice for the past four years, and the Crusader states in general were suffering from repeated attacks from the Muslims. It was believed that the sins of the people needed to be corrected before Jerusalem could prosper.

Canons 1-3 deal with tithes to the church.

Canon 1: is a promise by King Baldwin II to surrender the appropriate tithes to the Patriarch, namely those from his own royal estates in Jerusalem, Nablus and Acre.

Canon 2: Baldwin II seeks forgiveness for the tithes he had previously withheld.

Canon 3: Warmund absolves him of this sin.

This shows that the church was able to assert its rights in the Crusader Kingdom, a victory in the Investiture Conflict still raging in Europe.

Canons 4-7 deal with adultery.

Canon 4: outlines punishments for a man who is suspected of committing adultery with the wife of another man; first, he is to be forbidden from visiting the woman, and if he visits her again, he is to come before the church and be subjected to the ordeal of hot iron to prove his innocence.

¹ https://en.wikipedia.org/wiki/Council_of_Nablus

Canon 5: If he is proven to have committed adultery, canon 5 decrees that "*eviretur*" - he should have his penis cut off - and then he should be exiled. The punishment for the adulterous woman is mutilation of the nose, a familiar Byzantine punishment, unless her husband takes pity on her, in which case they should both be exiled.

Canon 6: deals with a similar situation for clerics: if a man suspects a cleric from visiting his wife, the cleric should firstly be forbidden from visiting her; a second offense should be pointed out to a church magistrate, and a third offense will result in the deordination of the cleric. He will then be subject to the same punishments described in canon 5.

Canon 7: forbids a pimp or a prostitute from "*corrupting a wife with words*" and causing her to become an adulterer. The punishments in canon 5 apply here as well.

Canons 8-11 establish punishments for sodomy, the first appearance of such punishments in medieval law.

Canon 8: According to canon 8, an adult sodomite, "*tam faciens quam paciens*" (both the active and the passive parties), should be burned at the stake.

Canon 9: If, however, the passive party is a child or an elderly person, canon 9 says that only the active party should be burned, and it will suffice that the passive party repent, as he is presumed to have sinned against his will.

Canon 10: If the sodomy is against his will but he keeps it hidden for whatever reason, canon 10 says that he too will be judged as a sodomite.

Canon 11: allows for a sodomite to repent and avoid punishment, but if he is found to have participated in sodomy a second time, he will be allowed to repent again but will be exiled from the kingdom.

Canons 12-15 pertain to sexual relations with Muslims, an important question in the Kingdom, where Muslims far outnumbered their Latin overlords.

Canon 12: states that a man who willingly has sexual relations with a Muslim woman should be castrated, and she should have her nose mutilated.

Canon 13: If a man rapes his own female Muslim slave, according to canon 13 she should be confiscated by the state, and he should be castrated.

Canon 14: If he rapes another man's female Muslim slave, canon 14 says that he should be subjected to the punishment for adulterers stated in canon 5, castration.

Canon 15: deals with the same subject for Christian women - if a Christian woman willingly has sexual relations with a Muslim man, they should both be subjected to the punishment for adulterers, but if she was raped, then she will not be held accountable and the Muslim will be castrated.

Canon 16: prohibits Muslims from dressing like Christians. This canon foreshadows the similar canon 68 of the Fourth Lateran Council almost one hundred years later in 1215, which would prohibit both Jews and Muslims from adopting Christian

dress. Similar laws were promulgated in Spain, where Christians, Jews, and Muslims similarly intermingled.

Canons 17-19 deal with bigamy, another important subject, as many crusaders had abandoned their families in Europe.

Canon 17: If a man takes a second wife, he should do penance until the first Sunday of Lent, but if he hides his crime and is discovered, his property should be confiscated and he should be exiled.

Canon 18: allows for bigamy to go unpunished if a man or woman unknowingly marries someone who is already married, as long as they can prove their ignorance.

Canon 19: If a man has taken a second wife and wishes to divorce her, canon 19 states that he must prove that he is already married, either by the ordeal of hot iron, or by bringing witnesses to swear for him.

Canons 20-21 deal with clerics.

Canon 20: says a cleric should not be held guilty if he takes up arms in self-defense, but he cannot take up arms for any other reason nor can he act like a knight. This was an important concern for the Crusader states; clerics were generally forbidden from participating in warfare in European law, but the Crusaders needed all the manpower they could find, and only one year before, Antioch had been defended by the Patriarch following the Battle of Ager Sanguinis, one of the calamities referred to in the introduction to the canons.

Canon 21: says that a monk or canon regular who apostatizes should either return to his order or go into exile.

Canon 22: simply forbids false accusations.

Canons 23-25 pertain to theft.

Canon 23: says that anyone convicted of stealing property worth more than one bezant should have either a hand or foot cut off, or an eye removed. If the property was worth less than one bezant, he should be branded on the face and publicly whipped. The stolen goods should be returned, but if they are no longer in the thief's possession, the thief himself becomes the property of his victim. If the thief is caught stealing again, he should either have his other hand, foot, or eye removed, or he should be killed.

Canon 24: If the thief was underage, canon 24 says he should be kept in custody and then sent to the royal court, but no further punishment is outlined.

Canon 25: states that these punishments also do not apply to the barons, who should be subject only to the judgment of the royal court.

The following discussion does not align with the above description for reasons unknown though both concern the *Concordat of Nablus*.

BACKGROUND²

The *Concilium Neapolitanum* was convened on 16 January 1120 in the town of Nablus in Palestine. The resulting 25 canons became known by the name the *Concordat of Nablus*. The *French translation* is actually ~~and English translation of~~ the French copy of the canons made by a Bishop. a translation while the English translation was from a

The first three canons were a concordat, comparable to the Concordat of Worms which ended the Investiture dispute in Europe in 1122. The other canons are partly ecclesiastical and partly secular in nature. The fourth through twenty-second canons deal with adultery, prostitution, sodomy, interbreeding with Muslims, bigamy, false accusations, and the clergy participation in war. The last three canons deal with theft.

The number given as the Capitulum is the same as the Canon number in the previous list.

Canon 1 [Capitulum XII]

This text is the first of the five canons of the Council of Nablus condemning sexual relations between Christians and Muslims. It forbids the Franks to have sexual relations with their Muslim slaves.

French translation: *If it is proven that someone has consciously had sexual relations with a Saracen, he must be castrated and his nose cut off.*

Canon 2 [Capitulum XIII]

This canon is the second of five from the Council of Nablus dealing with sexual relations between Christians and Muslims. This law seems to demonstrate the desire to prevent the sexual abuse of female slaves. The penalty provided for the rape of the latter, namely castration, happens to be identical to that which punished sexual relations with a consenting slave.

French translation: *If someone rapes his Saracen slave, she will be confiscated by the taxman and he will be castrated.*

Canon 3 [Capitulum XIII]

This canon is the third of the five canons of the Council of Nablus condemning sexual relations between Christians and Muslims. The authorities of the Latin East seem to have wanted to prevent the sexual abuse perpetrated on female slaves. The penalties for adultery were castration and expulsion, as appears in Chapter V of the Council. The penalty of castration was also inflicted on those who have sexual relations with their own slaves.

French translation: *If someone rapes the Saracen slave of another, the penalty for adultery will suffice.*

² Notice n° 1516, RELMIN project, "The legal status of religious minorities in the Euro-Mediterranean space (5th - 15th century)" Electronic edition Telma, IRHT, Institute for Research and History of Texts - Orléans <http://www.cn-telma.fr/remlin/auteur1516/>.

Canon 4 [Capitulum XV]

This canon is the fourth of the five canons of the Council of Nablus which relate to sexual relations between Christians and Muslims. The penalties provided for adultery were castration and expulsion for men, mutilation of the nose and expulsion for women, as appears in Chapter V of the Council. These punishments, typically Byzantine, were therefore extended to the Franks - that is to say to the Catholic Crusaders - having had sexual relations with their Muslim slaves (canons XII, XIII, and XIII).

French translation: *If a Christian has voluntary sexual relations with a Saracen, both will be judged for adultery. If she was raped by him, she will not be held guilty, but the Saracen will be made a eunuch.*

Canon 5 [Capitulum XVI]

This canon is the fifth of the five canons of the Council of Nablus condemning sexual relations between Christians and Muslims. He forbade them to dress like the Franks, to prevent this type of crime. It is the only canon of this council not to have been inspired by Byzantine law. The crusaders feared not only sexual relations (proscribed by canons XII to XV), but also contact and involuntary interbreeding.

French translation: *If a Saracen or Saracen dresses like a Frank, he will be apprehended by the fiscus (taxman).*

Oren Falk (Cornell University) translator

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Canons of the Council of Nablus, 1120

Biblioteca Apostolica Vaticana, MS Vat. lat. 1345, fols. 1r-3r (s.XII med./²)

Here begins the Council of Nablus.

In the 1120th year of the Incarnation of the Lord, compelled by our sins – the Kingdom of Jerusalem having been laid waste by many oppressions, and crops having been consumed these four years by locusts and mice, and [the land] having been made desolate by the very frequent attacks and ambushes of the Saracens, killing many pilgrims and citizens – the Patriarch Warmund, a man of dovelike innocence and a student of humility, and the son of fortune Baldwin, second King of Latin Jerusalem (together with the prelates of this church and the magnates of the kingdom, in the second year of the kingdom and the patriarchate, on the seven¹⁰th kalends of February [= 16 January 1120]), endeavouring through pious prayers and works of justice to stave off the imminent danger to the citizens, prodded by divine inspiration for uplifting the state of the church and the region, did call together a council in the city of Nablus in Samaria and, thus moved by the pressing need of the country, did establish for the chastisement of the floundering people the decrees which we write below. Since, indeed, at this very time the people of the aforesaid region pursued every pitfall of lust – and were therefore, infirm, endangered by daily misfortunes – they could see only one solution, [namely] both to invoke God's mercy and to impose some reins of justice on the lips of the sinning people, so that also – sins having ceased, as we have read happened among the Israelite people – divine retribution might cease and the mercy of God (Who desires not the death but the correction of the sinner) might rescue the penitent sons from the imminent danger of the enemies. For the enemies – namely, the Saracens – had the previous summer slain Roger, Prince of Antioch, and nearly the entire Principality of Christian Antioch, vanquished (alas!) in battle, and had invaded the region of Jerusalem more frequently than usual. But of these [matters], enough [said].

Now, however, we write down the names of the men who participated in the aforementioned council and who confirmed the subsequent precepts:

Warmund, Patriarch of Jerusalem.
Baldwin, second King of Latin Jerusalem.
Ebermar, Archbishop of Caesarea.
Bernard, Bishop of Nazareth.
Ausquitillius, Bishop of Bethlehem.
Roger, Bishop of Ramleh.
Guildoin, Abbot-elect of Saint Mary of the Valley of Jehoshaphat.
Peter, Abbot of Mount Tabor.
Achard, Prior of the Temple of the Lord.
Armal, Prior of Mount Zion.
Gerard, Prior of the Lord's Sepulchre.
Pagan, the king's Chancellor.
Eustace Gra[nerius].
William de Buris.
Barisanus, Constable of Jaffa.
Baldwin of Ramleh.

First Canon of the Council of Nablus

Since it is necessary that those [things] which begin from God will end in Him, in order that this sacred council begin from God and reach its conclusion in God, I, Baldwin, second King of Latin Jerusalem, undertaking the opening of this sacred council from God, do restore and concede (as He has commanded) to the sacrosanct Church of Jerusalem and to the present Patriarch Warmund and to his successors the revenue of my tithes, as the needs of his diocese demand – that is, the revenue of the tithes of Jerusalem and Nablus and Ptolemais (which by another name is called Acre) – so that he, carrying out the duty of prayer for the state of the kingdom before God, may presently prevail, upheld by the prop of royal charity. And if at some date, through the growth of the Christian religion, he or any of his successors should ordain a bishop in any of the aforesaid cities, let him administer those tithes by the counsel of the king and the Church.

2nd Canon

I, King Baldwin – the men of this sacred council witnessing and consenting, and my people and barons doing the same with their tithes, as the needs of their parishes demand – do, as I've said before, restore the tithes and, doing penance with them [= my barons], do beg forgiveness for those [things] which I or they have withheld therefrom.

3rd Canon

I, Patriarch Warmund – on behalf of Almighty God and by my power and that of all co-bishops and brothers assisting [me, i.e. all metropolitans of the Patriarchate] – absolve you for the restoration of past tithes; and [I], with them, affectionately receive the tithes which you have recognized you ought to give to God and to me and to your other bishops, and which [the needs of] the parishes of the brothers, present or absent, demand.

4th Canon

If anyone fears that his wife treats him ill, let him summons the man whom he suspects and, before legal witnesses, forbid him from entering his house and from speaking with his wife. If, however, he [= the husband] finds them conversing after the prohibition – him or any of his friends – at his house or another's, let the man be led without injury to limbs before the justice of the Church, and if he purges himself by glowing iron, let him be dismissed unpunished. Otherwise, if anything supports a shameful finding in [their] conversation, let him be dismissed unpunished without vengeance for the forbidden transgression.

5th Canon

Whoever is discovered to have lain with another's wife, let him, having been sentenced in judgement, be unmanned and expelled from this country. Let the adulteress, however, be de-nosed, unless her husband wishes to grant her mercy. Which, if he does, let them both travel beyond the sea.

6th Canon

If any cleric be held suspect, let him, as said earlier, be forbidden from [visiting] the house and from conversation with the wife. If, however, they are afterwards found conversing, he [= the husband] should show it to the ecclesiastical magistracy. And if after this he finds them again lying together or speaking, then at last let him lead them before a judge. Which, if the justice defrocks him, let him afterwards be subjected to secular sentencing for other offences.

7th Canon

If a pimp or a bawd should corrupt anyone's wife by words and make an adulteress of her, [they] shall undergo judgement as an adulterer or adulteress.

8th Canon

If any adult is discovered to have willingly polluted himself in sodomitic depravity, let him be burnt, both the active and the passive partner.

9th Canon

If a child or anyone older should be defiled by anyone sodomitically and should raise a cry about it, let the sodomite be given to the flames. He, however, who sinned unwillingly, let him do penance according to ecclesiastical sentence and let him not lose his legal standing.

10th Canon

If anyone subjected repeatedly to sodomitic sin by force should conceal it and allow himself again to be defiled, nor reveal it to justice, when it is later discovered, let him be judged as a sodomite.

11th Canon

If any sodomite, before he is accused, comes to his senses and, moved by penance, should renounce this abominable wickedness, swearing an oath, let him be received into the Church and judged according to the canonical sentence. If, however, he should relapse into it and should wish to repent a second time, let him be admitted into penance but removed from the Kingdom of Jerusalem.

12th Canon

If anyone is discovered to have knowingly lain with a Saracen woman, let him be castrated, and let her however have her nose sliced.

13th Canon

If anyone rapes his own Saracen woman, let her be confiscated [i.e., seized by the fisc = royal treasury], and let him however have his testicles cut off.

14th Canon

If anyone ravishes the Saracen woman of another, let him undergo the sentence of an adulterer.

15th Canon

If a Christian woman willingly miscegenates with a Saracen, let both be judged by the sentence of adulterers. If however she was raped by him, let no blame attach to her, but the Saracen shall be made a eunuch.

16th Canon

If a Saracen man or woman dress themselves according to Frankish custom, let them be confiscated.

17th Canon

If anyone, having a living wife, should take another [in wedlock], let him do penance, having confessed this to a priest by the first Sunday of Lent of the said year [= 3 March 1120], and afterwards let him conduct himself according to the Church's precept. If, however, he conceals it beyond this, let his property be confiscated and let him, the deceiver, be expelled from this land.

18th Canon

If anyone unknowingly takes another's wife [in wedlock], or a woman unknowingly weds another's spouse, let him whom ignorance protects remain in this land, the partner having been expelled, and let him have permission to marry.

19th Canon

If anyone, wishing to dismiss his spouse, says that he has or has taken another wife [who is] living, let him demonstrate it by hot iron or present the ecclesiastical magistracy with legal witnesses who prove it for him by swearing an oath. Those things, however, which we establish concerning sentences for misdeeds of the male sex, we confirm also for the female sex.

20th Canon

If a cleric should take up arms for the sake of defence, let him bear no blame. If, however, he should forsake the tonsure for the sake of knighthood or any other courtly [affairs], let him, having confessed it in church by the end of the aforesaid period [= 3 March 1120], return to the tonsure and thereafter conduct himself in accordance with the precept of the patriarch. But if he conceals it for longer, let him be restrained by the counsel of the king and patriarch.

21st Canon

If a monk or a regular canon should apostasize, let him either return to [his] order or go back to his homeland.

22nd Canon

Anyone who accuses another and cannot prove it shall be subject to the same penalty.

23rd Canon

If anyone should be convicted of robbery, if the theft should be above a Bezant [in value], let him lose a limb, be it hand or foot or eye. If indeed the theft were less than a Bezant, let his face be seared with a branding iron, and let him be led through town, flogged with a whip. And if anything should be found on him, let it be returned to him who incurred damage; if indeed he should have nothing, let his body be delivered to the man from whom he stole. If he goes back another time to perpetrating it, let him be deprived of all [his] limbs or of life.

24th Canon

If anyone should commit a theft and he was under age, let him be imprisoned, then let it be decided in the king's court what is to be done with him.

25th Canon

If any of the barons should capture a man equal in status to him in robbery, let him not lose limbs, but let him be delivered into the king's court for judgement.

The Concordat of Nablus

by HANS EBERHARD MAYER

On 23 January 1120, in the ancient town of Nablus in Samaria, Patriarch Warmund of Jerusalem and King Baldwin II of Jerusalem held a famous assembly of the highest dignitaries of the clergy and nobility. It has become known as the Council of Nablus, although it was not, strictly speaking, a church synod. Because of lay participation it was more of a *parlement*, or a *Reichsversammlung*,¹ a kind of

¹ J. L. La Monte, *Feudal Monarchy in the Latin Kingdom of Jerusalem 1100 to 1291*, Monographs of the Medieval Academy of America, Cambridge, Mass. 1932, 9, 94; J. Richard, *Le Royaume latin de Jérusalem*, Paris 1953, 68 = idem, *The Latin Kingdom of Jerusalem, Europe in the Middle Ages. Selected Studies*, Amsterdam 1979, 68; J. Prawer, 'Les Premiers temps de la féodalité dans le royaume de Jérusalem', *Tijdschrift voor rechtsgeschiedenis*, xxii (1954), 419–21 = idem, *Crusader Institutions*, Oxford 1980, 15–17, which deals only with cc. 24, 25; H. E. Mayer, *Geschichte der Kreuzzüge*, Stuttgart 1965, 84 = idem, *The Crusades*, London 1972, 79. The Council of Nablus in general has not greatly attracted the attention of crusading historians. S. Runciman, *A History of the Crusades*, Cambridge 1952, i, 156, devotes five lines to it; B. Hamilton, *The Latin Church in the Crusader States. The secular church*, London 1980, 64–5, gives it 17 lines; René Grousset, *Histoire des croisades*, 1, Paris 1934; J. Prawer, *Histoire du royaume de Jérusalem*, 1, Paris 1969; and R. L. Nicholson, 'The growth of the Latin states, 1118–1144' in *A History of the Crusades*, ed. K. M. Setton, 1, Philadelphia 1955, pass it over in complete silence. On the peculiar tithe system of the Latin East see J. Richard, *Chypre sous les Lusignans. Documents chypriotes des archives du Vatican (XIVe et XVe siècles)*, Bibliothèque archéologique et historique, lxxii, Paris 1962, 62; Mayer, *Kreuzzüge*, 159 = *Crusades*, 167–8; J. Prawer, *The Latin Kingdom of Jerusalem. European colonialism in the Middle Ages*, London 1972, 377. H. E. Mayer, *Bistümer, Klöster und Stifte im Königreich Jerusalem*, Schriften der M. G. H., xxvi, Stuttgart 1977, 182–3; Hamilton, *Latin Church*, 145. Hamilton argues that the free Frankish peasants holding their land in burgage tenure were generally required to pay the tithe. While this may be possible, it cannot be proven from Reinhold Röhrich, *Regesta regni Hierosolymitani* (henceforth cited as RRH), Innsbruck 1893, no. 340, adduced in evidence. We are dealing here with the settlement of Frankish peasants established by the canons of the Holy Sepulchre at *Magna Mahumeria* (al-Bira) north of Jerusalem. Tenure was held there by the peasants *ad terraticum et decimam*. But the landlord was the cathedral church itself which would not, of course, tax its own income. Hence in this special case where there was no secular landlord as intermediary, the Frankish peasants were tithed directly. That there was a secular usurpation of tithes in the kingdom of Jerusalem up to 1120 was mentioned briefly by Richard, *Royaume latin*, 100 = *Latin Kingdom*, 107, but without reference to the Investiture Contest and to the tithe situation prevailing between 1101 and 1120. I should like to record here my sincere gratitude to Dumbarton Oaks in Washington, D.C. where I was a Fellow during the academic year 1980/81, and had the time to write this study.



assembly common in all medieval kingdoms which would have been summoned to decide matters of general interest. William of Tyre gave it a whole chapter of his chronicle² and stated that its decisions were so widely known that it was superfluous to enumerate them. He correctly called the assembly a *conventus publicus et curia generalis*, and only in the rubric to the chapter was its synodal character referred to: *Apud Neapolim urbem Samariae concilium celebratur*.

Another author who noted its synodal character was the Venetian clerk, Cerbanus, who between 1125 and 1133 reported to Bishop Bonifazio Falier of Castello (d. 1133) concerning the translation of relics of St Isidorus from Chios to Venice. In his report he refers to *synodo celebrata* by the patriarchs of Jerusalem and Antioch as well as King Baldwin II.³ It is said that it was decided at this synod to send the well-known embassy to Venice requesting naval help which led to the eastern campaign by a large Venetian fleet under the command of the doge of Venice himself. This fleet helped to capture Tyre in 1124. It is generally held that the synod referred to by Cerbanus was the Council of Nablus, although William of Tyre does not mention the patriarch of Antioch as a participant, while the patriarch of Jerusalem was demonstrably absent from the conferences held at Antioch in 1119 between King Baldwin II and the patriarch of Antioch.⁴ The most likely explanation is that Cerbanus telescoped the two synods. Stationed at the imperial court at Constantinople, he wanted to make a pilgrimage to Jerusalem against the Emperor's wishes, but was refused permission. He fled twice, but never got further than Chios.⁵ He had therefore never been in the Latin Kingdom and, as he wrote after 1125, the confusion is understandable. That the king did actually send an embassy with letters to Venice is, however, recorded in the 'Pactum Warmundi' of 1123,⁶ in which Jerusalem and Venice agreed about the latter's share in the expected conquests. Cerbanus, from whom Marino Sanuto and Andrea Dandolo in the fourteenth century took their stories, also put on record that the embassy went to see Pope Calixtus II.

Cerbanus, although he realised that secular decisions had been taken, nevertheless considered the Nablus assembly to be a synod. William of Tyre called it a synod in the rubric and a general assembly in the text. The official decree embodied in the copy transcribed for the use of the church of Sidon⁷ called it a council but noted that it had been called jointly by the patriarch and the king. The decisions of the council which were

² William of Tyre, *Historia rerum in partibus transmarinis gestarum*, xii. 13, in *Recueil des historiens des Croisades, historiens occidentaux*, Paris 1844, i. 351-2.

³ Cerbanus Carhani, *Translatio mirifici martyris Isidori a Chio insula in civitatem Venetam*, in *Recueil des historiens des Croisades. Historiens occidentaux*, Paris 1895, v. 322.

⁴ Fulcher of Chartres, *Historia Hierosolymitana* iii. 4, ed. Heinrich Hagenmeyer, Heidelberg 1913, 625. The patriarch went with the army carrying the true cross as far as the Jordan River, but from there the cross was carried to Antioch by the archbishop of Caesarea.

⁵ Cerbanus, *Translatio*, 324.

⁶ RRH no. 102.

⁷ MS Vat. lat. 1345, printed by Giovanni Domenico Mansi, *Sacrorum conciliorum nova et amplissima collectio*, new edition, xxi, Paris 1767, 261-6.

recorded in the same manuscript dealt not only with the ecclesiastical tithe but also, at great length, with punishments for sexual offences and other crimes to be judged in court Christian. However, c. 22 was concerned with false accusations, obviously both in court Christian and court secular, while cc. 23-5 treated of theft. These last provisions were definitely secular in character.

It can be said, then, that the Council of Nablus was a *parlement*, because it dealt with secular jurisdiction and in all likelihood decided on the embassy to the pope and to Venice. But it must also definitely be classed as a synod, since 21 out of 25 canons dealt exclusively with ecclesiastical affairs. The preface to the decree set the assembly in an atmosphere of penitence befitting the regulation of such crimes as adultery, sodomy, etc., and this was underlined by William of Tyre in his account based on the preface. There had been signs, it said, that God was visiting his wrath on the Holy Land: the year before the army of Antioch had been massacred at the battle of the *Ager Sanguinis*; for four years locusts and mice had eaten up the crops; there had been earthquakes; it was time to repent. But, unfortunately for this line of reasoning, the last plague of locusts and mice as well as the last earthquake had been reported by Fulcher of Chartres, who religiously recorded such misfortunes, in 1117 and he did not link them to the libertinism of the Franks in the East but to one concrete event: the repudiation of Adelasia of Sicily by her bigamous husband King Baldwin I.⁸

Yet the atmosphere at Nablus was indeed one of penitence. This is apparent from the first three canons themselves. In c. 1 the king 'restored' to the patriarch the tithe of all his income in the dioceses of Jerusalem, Nablus (at this time united with Jerusalem) and Acre where no bishops had as yet been installed. It was also decided that if new bishoprics were created there the patriarch should settle the tithes on the bishops with the counsel of the king and the church. In c. 2 the king, with the approval of his barons, granted that the ecclesiastical tithes due from his barons and also 'restored' should be spent according to the needs of the parishes. In c. 3 the patriarch received these tithes which were owed to him and his bishops, whether present or absent, according to the needs of their respective parishes.

The importance of these provisions has long been noted. The tithe system as established in the Latin East had its peculiarities. The tithe there was owed to the bishops, not to the parish churches. However, the distinction between the tithes accruing to the patriarch for his whole diocese from the king in c. 1 and those accruing from the barons for the parishes in c. 2 was of no significance, because c. 3 reveals that the patriarch and the bishops present accepted the tithes for themselves to be spent according to the needs of their respective parishes. The meaning of this phrase must be

⁸ Fulcher of Chartres, *Historia*, ii. 60, 602-5.

sought in another direction. In 1120, early in the kingdom's history, there was no system of rural parish churches, and it is clear that in most cases bishopric and parish were identical. The tithes belonged to the bishop, and, therefore, as and when parish churches were created, the bishop was obliged to see that they had an income. There is no doubt that this is how the system functioned, because with one exception described elsewhere,⁹ tithes that were not in episcopal hands had all been donated by bishops. The other principle established at Nablus was that it was landlords and not tenants who paid tithes, for king and barons alone are mentioned as owing them. Thus, a Frankish tenant's income (after secular taxation) escaped ecclesiastical taxation. But the Church, by taxing the landlord, could reach the mass of non-Latin Christians by collecting one-tenth of what they paid to their lord. Taxing only Latins would have yielded considerably less, because most of the rural population was Syro-Christian and Muslim. Taxing the landlord and not the tenant was not introduced in 1120 as a new principle. Eight years before in 1112 Patriarch Arnulf had given tithes accruing to certain landlords in certain villages, not all the tithes accruing there, for the rebuilding of the church of Josaphat outside Jerusalem¹⁰ – a fundamental difference.

What has not so far been noted, however, is the tone of contrition in cc. 1–3 of the decree of Nablus. The king 'restored' the tithes to the Church (c. 1). He confessed that he and his barons had been guilty of *superbia* when they withheld the tithes, and asked to be forgiven (c. 2). The patriarch 'absolved' him and his barons (c. 3). But not only had Patriarch Arnulf been able to give tithes to Josaphat in 1112. It had also been he and not the king who had given the tithes of Jerusalem to the canons of the Holy Sepulchre when they were reformed in 1114 and the possessions of the church were divided between patriarch and chapter. Even though a royal charter and a separate one by the patriarch were issued on this occasion,¹¹ the tithes occur only in the patriarch's charter. Why did the king 'restore' to the Church in 1120 tithes of which it had previously been able to dispose? What had happened?

Here I must reiterate my conviction that medieval charters are primarily legal documents and must carefully be read as such. I mean by this that the clauses contained in them must have a legal meaning. What the king gave or confirmed to the canons of the Holy Sepulchre in 1114 he gave of his own free will, having been petitioned (*rogatus*) by the patriarch and the canons to do so. The patriarch acted in a more restricted way. He gave the canons the tithes of Jerusalem and other income and possessions expressly with the counsel of the king (*consilio regis*) and was ordered by him (*rege...imperante*) to make this public. However, no royal inference is mentioned with regard to the patriarch's action in reforming the canons secular to become canons regular, since this was a purely ecclesiastical affair reserved to the Church. Only when it was a question

⁹ Mayer, *Bistümer*, 183–92.

¹⁰ RRH no. 67. Mayer, *Bistümer*, 267–70.

¹¹ RRH nos. 74, 75.

of ecclesiastical income had the patriarch to record the king's assent, just as he did in 1112 when he gave tithes for the rebuilding of Josaphat. When, as early as 1102/3 Patriarch Ebremer of Jerusalem had defined the rights of the canons secular at the Holy Sepulchre and, especially when he settled individual prebends on them, he not only obtained the consent of Baldwin I, but even had the royal seal affixed to the patriarchal charter.¹²

In Galilee Prince Tancred had used the entire property of the famous monastery of the Saviour on Mount Thabor for his own purposes. It was not until the spring of 1101 when he left permanently for Antioch that he partly returned it (*reddidit*) in what must be considered his good-bye present to the monastery.¹³ The latter received Mount Thabor itself and two villages in the vicinity. It also had two villages east of the river Jordan and two in the mountains of Galilee. Agreement to leave eleven villages in Galilee and four more east of the Jordan to the monastery was easily reached because the former were totally in ruins and the latter were in Turkish hands. But another four villages which were recognised to belong in principle to the monastery were disposed of by Tancred as if he were a lay abbot of old: because of the scarcity of land and the needs of his knights (*propter terrarum angustias et indigentiam militum*) they had been given to his knights and would remain in their possession. Only the tithes were reserved for the monastery and the abbot received no more than a vague promise that the villages would eventually be returned to the monastery. This was done with the express approval of King Baldwin I and of Patriarch Daimbert of Jerusalem. Baldwin had no difficulty in agreeing to this uncanonical alienation of church property, and the patriarch could not but approve of a settlement (justified in theory by the old maxim of Roman and canon law: *quia necessitas non habet legem*) which at least partly remedied the previous even more uncanonical situation. Even the pope may have given his approval in 1103.¹⁴ In 1106, when King Baldwin I confirmed Tancred's charter of 1101 the situation had not noticeably improved.¹⁵ To be sure, only one village was then still owned by knights and the king ruled that this was to continue unchanged during their lifetime. But he himself had acquired a good deal of the abbey's property and was unwilling to promise more than that he would return it three years

¹² RRH no. 40. For the date see Mayer, *Bistümer*, 53 n. 36.

¹³ RRH no. 36. It is dated 1101, *indictione viii*. This led F. Kühn, *Geschichte der ersten lateinischen Patriarchen von Jerusalem*, Leipzig 1886, 69, to assume *calculus Pisanus* which would date the charter 25 March to 31 August 1100. He overlooked that the charter talks of Baldwin I as already king (elevated in November 1100, crowned 25 December 1100) and mentions both Godfrey of Bouillon and Baldwin I in the most deferential terms. This is incompatible with the political situation prevailing after the accession of Baldwin I when Tancred openly refused to pay homage to him for Galilee. He came to an agreement with Baldwin in March 1101 and then left for Antioch to accept the regency there. We must, therefore, conclude that the indiction should have been *viii* and that the charter is to be roughly dated in March 1101, after the agreement but before Tancred left for Antioch.

¹⁴ JL no. 5948. Its authenticity was acquired by Carl Erdmann, but probably not with sufficient reason. Cf. Mayer, *Bistümer*, 91 n. 34.

¹⁵ RHR no. 51.

hence, or earlier if God would make him prosperous: Baldwin remained impecunious for most of his life.

The long and bitter controversy between the bishop of Nazareth and the abbot of the Thabor monastery concerning the latter's relation to Nazareth was settled in 1111 by Patriarch Gibelin of Jerusalem in his capacity as papal legate.¹⁶ The monastery had to make some concessions to the bishop, but the consecration of the main church and the ordination of the abbot and the monks was to be performed by the patriarch of Jerusalem. The tithes of the diocese of Tiberias, where no bishop had as yet been installed, were partitioned, two-thirds going to Nazareth and one-third to Thabor. Gibelin's decision had been taken at a church synod, but the assent of the king and his magnates was sought and obtained. Once more we see the secular arm participating in what should have been an exclusively ecclesiastical affair and, in particular, in a tithe problem.

The years between 1111 and 1120 witnessed the last phases of the Investiture Contest in Europe. For long it was my opinion that the Investiture Contest had never been carried over to the Latin East.¹⁷ More recently, however, I have come to see that some, at least, of the abuses about which the contest was fought existed in the Latin East. There were, for instance, proprietary churches in the pre-Gregorian sense, i.e. churches belonging to laymen who controlled their revenues. I have cited elsewhere the Dome of the Rock given to the Norman Tancred; also St Lazarus at Bethany and some other less important churches; possibly also the main mosque of Ascalon.¹⁸ I have also come to interpret the struggle between King Baldwin I and Patriarch Daimbert of Jerusalem of 1101 over the patriarch's obligation to furnish knights for the royal army as a part of the then world-wide investiture debate.¹⁹ Daimbert had argued that those serving the altar should live on its income (*ut qui altari serviunt de altari vivant*). To this, Baldwin had coldly replied that political considerations demanded that Christian knights should be fed from the altar (*ut de altari potius christiani milites pascantur*) rather than that the Saracens should carry off from the Holy Sepulchre the gifts of the faithful by force. But Daimbert had raised the key issue of the Investiture Contest, i.e. the *libertas ecclesiae*, in the presence of the papal legate. He asked Baldwin whether he dared to make the Church tributary and a bondswoman (*An tributariam et ancillam facere sanctam praesumis ecclesiam?*) when Christ had changed her from a slave into a free woman (*liberam ex ancilla faciens*) and had committed her to the custody of the apostles. The king, he said, ought to be careful not to incur the papal anathema. The papal legate knew better than to approve this bold suggestion. He maintained a stony silence during the quarrel and later worked towards a compromise which came to nothing because

¹⁶ RRH no. 69. Mayer, *Bistümer*, 91–2.

¹⁷ Mayer, *Crusades*, 169.

¹⁸ Mayer, *Bistümer*, 158, 209, 225, 359, 390.

¹⁹ Ibid., 226–7. The following quotations from Albert of Aachen, *Historia Hierosolymitana* vii. 60–3, in *Recueil des historiens des Croisades. Historiens occidentaux*, Paris 1879, iv. 547–8.

Daimbert would not keep his promises. Baldwin I was an entirely pre-Gregorian king and not the kind of man who would deal leniently with any patriarch who opposed his wishes. He charged Daimbert with embezzling large sums of money. When the patriarch found it difficult to defend himself, and the papal legate could not be persuaded to depose him, the king banished him to Jaffa in the fall of 1101. In March 1102 with the acquiescence of the legate Daimbert retired to Antioch to live in exile.

But about this time Daimbert received moral support from none other than Anselm of Canterbury, an old friend of Baldwin's mother²⁰ and since 1100 the king of England's chief opponent in the English Investiture Contest. Anselm dispatched a letter to Baldwin through Renier, one of his mother's clerics.²¹ Anselm congratulated Baldwin on his elevation to the kingship of Jerusalem, but added some rather outspoken comments. The king ought not to believe, as many bad kings did, that the Church was his to rule over. God loved nothing more in this world *quam libertatem ecclesiae suae*... *Liberam vult deus esse sponsam suam, non ancillam*. Those who ruled the Church as a subject, turned themselves from sons into aliens. This letter is clear proof that in Anselm's view Baldwin was violating the *libertas ecclesiae* and Baldwin must have understood this well enough, as he was perfectly familiar with the issues. He had left Europe in 1096 while the struggle was still raging, especially in the Empire of which his home, Lorraine, was part. He had also been brought up in the clergy as a canon of Rheims, Cambrai and Liège.²²

It is time to ask how far the Investiture Contest really touched the kingdom of Jerusalem. We have seen that Baldwin's struggle with Patriarch Daimbert echoed its issues and that Anselm of Canterbury was clearly under the impression that the same situation which caused the struggle in Europe also prevailed in Jerusalem under Baldwin I. The Investiture Contest was over the *libertas ecclesiae* in general, and in particular several practical issues.

(1) Simony, i.e. the purchase of ecclesiastical offices. Of this we have no evidence in the Church of Jerusalem if taken in the strict sense of money

²⁰ Anselm wrote to her repeatedly. Cf. *Sancti Anselmi Cantuariensis archiepiscopi opera omnia*, ed. Franciscus S. Schmitt, Edinburgh 1946-51, iii-v. epp. nos. 82, 114, 131, 167, 244, 247.

²¹ Ibid. Edinburgh 1949, iv. 142, ep. no. 235. The carrier Renier is surely identical with Ida's cleric of the same name mentioned in ep. no. 167. This letter was first used in crusading research by Jonathan Riley-Smith in connection with the title of the first rulers of Jerusalem, in 'The title of Godfrey of Bouillon', in *Bulletin of the Institute of Historical Research*, lii (1979), 84 n. 12. For the date of the letter see F. S. Schmitt, 'Die Chronologie der Briefe des hl. Anselm von Canterbury', *Revue Bénédictine*, lxxiii (1953), 198. The sequence of Anselm's letters in the best manuscripts is roughly chronological and this one precedes those datable in 1102. It was certainly written after 25 December 1100 and before Anselm's second exile beginning on 27 April 1103. The king's expulsion of Daimbert from his see was a more likely cause of Anselm writing this letter than the quarrel over the ecclesiastical income, as banishing the patriarch was a drastic step likely to be widely noticed in Europe.

²² William of Tyre, *Historia* x. 1, p. 401.

payments, although a man like Patriarch Arnulf would certainly not have been above such an activity.

(2) Free canonical elections of bishops, i.e. an effective safeguard against simony. In principle these were granted in all countries shaken by the Investiture Contest. But the Concordat of Worms of 1122 imposed an important condition that the elections had to take place in the presence of the king or his representative. The same seems to have been true in England under the much less well-known terms of the Concordat of London of 1107. In any event, English bishoprics practically remained in the king's gift. Roger of Hoveden, for example, cites with tedious monotony case after case of the king 'giving' a bishopric to somebody. There are isolated cases of lay investiture on record in England under the Empress Matilda and King John.²³ And the young King Henry, to discredit his father Henry II in Rome, sent the pope the following shocking writ which Henry II had sent to the monks of Winchester: 'I order you to hold a free election, but, nevertheless, I forbid you to elect anyone except Richard my clerk, the archdeacon of Poitiers.'²⁴ Nowhere, neither in Europe nor yet in Jerusalem, could the crown afford to let the control of ecclesiastical appointments go, and the influence of the crown in the episcopal elections in Jerusalem was indeed very powerful. Two examples may be cited. The election of Patriarch Amaury of Jerusalem in 1157 was done *contra iuris regulas per interventum domine Milissendis regine, cuius aliquando vivente marito fuerat capellanus familiaris, cum ea laborantibus et ministrantibus tam domina comitissa Tripolitana Odierna, domine Milissendis sorore, quam domina Flandrenssium comitissa Sibilla, domini regis itidem sorore*.²⁵ Again, as late as 1180, when two candidates for the patriarchate were presented to the crown by the canons of the Holy Sepulchre, the successful one was appointed through the influence of the king's mother. In the early thirteenth century it was expressly stated that this was the normal procedure, at least in 1180,²⁶ and there was no change until Celestine III cut back the royal prerogative to approval (or rejection) of a free election.²⁷

(3) Lay investiture, i.e. the investiture of a bishop by the king with ring and staff as the insignia of his ecclesiastical office. Of this we have no evidence in the Latin East and it can be assumed that this conspicuous way of demonstrating the king's overlordship over the Church was by 1099 too much criticised to be introduced into the Latin Kingdom. But lay investiture was by itself a meaningless ceremony. What was offensive was that it was a symbol of lay control of the Church, including church property and church income. In doing away with lay investiture the

²³ A. L. Poole, *From Domesday Book to Magna Carta 1087-1216*, 2nd edn, Oxford 1955, 180.

²⁴ Ibid. 220.

²⁵ William of Tyre, *Historia*, xviii. 20, printed only by R. B. C. Huygens, 'La Tradition manuscrite de Guillaume de Tyr', *Studi medievali*, 3rd ser, v (1964), 302.

²⁶ P. W. Edbury and J. G. Rowe, 'William of Tyre and the patriarchal election of 1180', *EHR*, xciii (1978), 5-7.

²⁷ R. Hiestand and H. E. Mayer, 'Die Nachfolge des Patriarchen Monachus von Jerusalem', *Basler Zeitschrift für Geschichte und Altertumskunde*, lxxiv (1974), 110.

settlements of the contest removed in principle the Germanic institution of the proprietary church owned by the person on whose land a church had been built and who therefore claimed control over its income and the appointment of its priest. This was an old problem. Lay abbots of the ninth and tenth centuries squandering the incomes of their abbeys are well-known figures. But this undesirable state of affairs had largely been done away with in monasteries by the reform movement. It was the long-standing application of this Germanic principle to the bishoprics which the Gregorian Church could no longer tolerate, and it is well known that the settlements of the contest were mainly concerned with the episcopal issue. The proprietary church at the lower level disappeared only gradually throughout the twelfth century.

The kings of Jerusalem never released their control of episcopal elections up to the 1190s, and until then they always reserved their right to choose between nominated candidates. But before Innocent III the Church everywhere tolerated formally or informally this much influence. It could not be denied to the Latin Church in the East, where it was desirable that crown and church should collaborate closely against the common enemy.

It can be seen from the evidence adduced above that King Baldwin I certainly claimed lay control of ecclesiastical income and never yielded on this point. If the king exercised such a control, there is no reason why his barons should not have done so too, and the case of Tancred of Galilee shows that they did. But the case of Baldwin II was different. William of Tyre described him as a man of great piety who prayed so much that he developed callus on his knees.²⁸ Also his succession had been hotly disputed among the nobility. Baldwin II had carried the election only after much manoeuvring, and mainly because he had happened to be present in Jerusalem when the corpse of his kinsman Baldwin I arrived for the funeral. The party who favoured the late king's brother, Eustace III of Boulogne, tried to bring him over, but, upon learning in Italy that Baldwin II had actually been made king, he turned back. To William of Tyre Baldwin's succession seemed to be somewhat irregular (*videtur tamen minus regularem habuisse introitum*).²⁹ He also tells us that Baldwin II's supporters were led by Prince Joscelin II of Galilee and Patriarch Arnulf and that Joscelin made a deal by which Baldwin II, in return for his support, made him count of Edessa. If Joscelin named his price, might not Arnulf also have done so?

It was clear that Baldwin II could not become king without the support of at least some of the vassals. But he also needed the patriarch because it was his prerogative to anoint and crown him. Only in his absence were the archbishops allowed to replace him. Such prerogatives were everywhere jealously guarded. The coronation of the young King Henry in 1170 by the archbishop of York was the final provocation which roused Becket's ire against Henry II. And earlier, in 1121, when Henry I of England's

²⁸ William of Tyre, *Historia*, xii. 4, p. 516.

²⁹ *Ibid.* xii. 3, p. 515.

second wife was to be crowned, there was an undignified scene. As the archbishop of Canterbury entered the church, he found the king already wearing a crown. Being afraid that perhaps another bishop had placed it on the king's head, he refused to proceed with the service until the king had first removed the crown to let the archbishop replace it.³⁰ Since Baldwin II's succession was in dispute and there was no time to waste if he wished to exclude Eustace III, it was the perfect occasion for an able but unscrupulous churchman like Arnulf to exact a high price from a pious man like Baldwin.

It is true, he was only anointed at Easter 1118 and as he was not crowned until Christmas 1119,³¹ it would be tempting to attribute the delay to political reasons. But it was anointing and consecration which made a king, not coronation. Arnulf might have wished to defer the coronation until the problem of Eustace III was settled, but since he had performed the unction, deferring the coronation would have made little difference. It is, indeed, both tempting and plausible to assume that Patriarch Arnulf's price for making Baldwin II king of Jerusalem was that he should solemnly grant the Church complete control of its revenues or, at least, their largest part, i.e. the ecclesiastical tithes. Under Baldwin I Arnulf had almost always been the weaker of the two. He owed his appointment to Baldwin I and generally felt it advisable not to work against this very determined ruler who had ridden rough-shod over several patriarchs. Moreover, Arnulf had enough trouble merely to maintain himself in office up to the year 1116. There were many grounds for the attacks on him – such as alienating church property in favour of his niece, his conduct with women and the fact that he had been born out of wedlock – and he tried to efface this unfavourable record by proving himself an energetic church reformer. The royal control of ecclesiastical tithe, which undoubtedly existed, must have appeared distasteful to him and as something to be discontinued when the opportunity presented itself at the accession of Baldwin II. Arnulf was in a strong position, especially as Baldwin was a genuinely pious person who may well have seen that royal and baronial control of church income was no longer in keeping with the times.

Thus, it would have been a natural bargain to strike and one that I believe was indeed struck. However, Arnulf died on 28 April 1118, only two weeks after Baldwin's consecration and anointing. A new patriarch was not elected until the late summer of 1118. New negotiations may have ensued and, if so, they must have been over by May 1119, when the king went on a campaign to the Jordan. From there he was directly called to Antioch where he stayed until late in 1119 when he returned to Jerusalem shortly before Christmas and was duly crowned on Christmas Day in Bethlehem. In the following month he fulfilled what we may see as his side of the bargain, when he convoked the Council of Nablus jointly with the

³⁰ Poole, *Domesday Book to Magna Carta*, 213.

³¹ Fulcher of Chartres, *Historia*, iii. 1, 7, pp. 616, 635.

patriarch. Here, after the patriarch had preached a sermon of penitence,³² he solemnly and in a fine show of public contrition 'restored' the tithes. This he did by releasing them from secular control and confessing himself guilty of having exercised such control. On the point of episcopal elections he could not, and did not, yield, even if he had ever been asked to do so. But, so far as ecclesiastical income was concerned, the Investiture Contest in Jerusalem was over.

The barons followed the example of their king and released whatever control they had of ecclesiastical tithes. But they safeguarded one of their essential interests. In c. 1 the king had given up the tithes for Jerusalem, Nablus and Acre, returning them to the patriarch *sicut ratio dioecesis eius exigit*. This meant that the patriarch could not spend this income outside the area which he effectively controlled at the time as a bishop. Jerusalem, Nablus and Acre were the centres of the royal demesne in Judaea, Samaria and Galilee. The royal demesne corresponded roughly to the area which was, at that time, the patriarch's diocese. But in case bishops should be installed in Nablus or Acre, the patriarch was expressly obliged to let the new bishops have that part of the tithe on royal income which accrued in Nablus or Acre, i.e. in the royal demesne in Samaria or Galilee. The barons' case was different, partly because they had scattered holdings outside their baronies and partly because diocesan borders often did not correspond, even roughly, with those of the baronies. Hence the barons released the tithes *prout parochiarum suarum ratio exigit* and the patriarch received them with this express condition (cc. 2, 3). A hypothetical example from 1160 will demonstrate this. The count of Ascalon was tithed on his income there by the bishop of Bethlehem, but the bishop was not allowed to spend this revenue in Hebron which was also a part of the diocese of Bethlehem, but was outside the county of Ascalon. It had to be spent on the cure of souls in the county of Ascalon, *ratione parochiae*. It would not have been necessary to make this precaution in Europe because lords and tenants would have paid their tithe to their local parish church. But as only the landlords were tithed in the East and as they paid their tithe to the bishop, they had to make sure that the bishop was obliged to spend the money roughly where it had been collected and not anywhere else in his diocese at his own discretion.

It is interesting to see how the chroniclers reacted to the Council of Nablus. Fulcher of Chartres must have had divided feelings about the event. As a member of the clergy he would have welcomed it, but as chaplain to King Baldwin I since 1097 it would have appeared to him as a royal defeat. He deemed it wise not to mention the council at all. William of Tyre, trained in canon law in the schools of Bologna, was a champion of ecclesiastical liberty. He therefore told the story of the council in great

³² William of Tyre, *Historia*, xii. 13, p. 531.

detail: how the participants assembled, how the patriarch preached an admonitory sermon, how they felt they had to amend for their wrongdoings and how they established twenty-five canons of law. But he does not give us any indication as to the contents of these canons. He merely wrote that the reader might easily find them in the archives of many churches. This was indeed true: every bishop needed them and it is clear from William's text that he himself had a copy. But as well as being a champion of the *libertas ecclesiae*, William was also a royal historian, and, like Fulcher, he may have thought it tactful to omit the text of the decree. We must also remember that he violently disapproved of the Patriarch Arnulf. And if the demand for the tithes to be released from secular control had originally come from Arnulf, it is easy to see why William spoke of the council in generalities without mentioning the central issue. That would have meant admitting that Arnulf had, for once, done the right thing.

Thus, the Investiture Contest did, indeed, touch the kingdom of Jerusalem, and its end in Europe was a matter of particular relief, since there was then hope that pope and emperor could henceforth collaborate on behalf of the Holy Land. The same Fulcher of Chartres, who had not written a word about the Council of Nablus, recorded his great joy at the reconciliation between the king of Germany and the pope.³³ And the famous 'Pactum Warmundi' of 1123, in which the regents of Jerusalem promised the Venetians their share in the future conquest of Tyre, even though it confused Henry IV of Germany with Henry V, also referred to the end of the contest.

Incidentally, this charter contains one of the earliest records of the contest being called the controversy over the ring and the staff. The charter, inserted in full in William's chronicle,³⁴ begins: 'When Pope Calixtus II and Henry IV, august Emperor of the Romans, were ruling, the one over the Church of Rome, the other over the Empire, in the same year when at a council held at Rome, peace was concluded, by the will of God, between church and state in the controversy over the ring and the staff, Domenigo Michiel, Doge of Venice... came victorious to the much needed defence of the Christians.' The reference was to its ratification at the First Lateran Council of 1123 rather than to the Concordat of Worms. But if we accept that King Baldwin II of Jerusalem's ambassadors to Venice were dispatched from the Council of Nablus of 1120 in which the Investiture Contest over ecclesiastical income in the kingdom of Jerusalem was settled, and if we recall that the same embassy also visited Pope Calixtus II, then the reference to the contest in the charter which describes the Venetian fleet coming in response to the appeal is an entirely natural one. The charter also clearly expressed the hope that as at last the

³³ Fulcher of Chartres, *Historia*, iii. 13, p. 653-4.

³⁴ RRH no. 102. William of Tyre, *Historia*, xii. 25, pp. 550-3.

THE CONCORDAT OF NABLUS

long conflict between church and state had been finally settled, a new era of common Christian aid to the Holy Land could begin. The struggle there had ended on 23 January 1120 at the Council of Nablus. It is surely appropriate that the decree of this council should therefore be entitled the Concordat of Nablus.

The Archbishops of Canterbury and the Practice of Hospitality

by FELICITY HEAL

One dinnertime in the early 1540s Thomas Seymour, brother to the future Lord Protector, arrived at Lambeth Palace with an urgent message from the king to the archbishop of Canterbury. He found Cranmer's household at their meal in the great hall, the company sitting in due order under the watchful eyes of the senior officials of the establishment. Seymour was warmly received by the archbishop in his chamber and a meal was pressed upon him; then he was sent on his way with the appropriate response for the monarch. The occasion was more than a routine one for an exchange of messages: indeed it may have been deliberately contrived by Henry VIII, with or without the connivance of the archbishop, to force the courtier literally to eat his words. Seymour had been busy denouncing Cranmer for keeping no hospitality 'or house correspondent with his revenues and dignities', but, instead, for wasting his income on the purchase of lands for the benefit of his family. When the king enquired of him about the adequacy of the Canterbury household he was, grudgingly, forced to admit 'he be not in the realm of none estate or degree that hath such a hall furnished, or that fareth more honourably at his own table'. Henry seized the opportunity to lecture the assembled company on the dangers of seeking after episcopal wealth. So long as the prelates continued to dispense hospitality he would not, he asserted, allow them to be despoiled by laymen who had already dispersed the wealth of the monasteries. As for the archbishop he was above reproach and a model to all his fellows 'for he spendeth (ah, good man) all that he hath in housekeeping'.¹

The story of Cranmer's dinner, told by his secretary Ralph Morice and repeated in Foxe's *Book of Martyrs*, throws very interesting light on the social values of sixteenth-century Englishmen and on perceptions of the obligations of the clergy. If a visitor from China had wished to study the

¹ *Narratives of the Days of the Reformation*, ed. J. G. Nichols (Camden Society, xlii, 1848), 260-3. J. Foxe, *Acts and Monuments*, ed. S. R. Cattley and G. Townshend, London 1837-41, vii. 14-15. Both versions derive from Morice, but the latter has additional detail, including the king's final remark.

The Regulation of “Sodomy” in the Latin East and West

By Ruth Mazo Karras

The chronology of the widespread criminalization of same-sex activity in medieval Europe is generally agreed upon. John Boswell argued that up until the twelfth century, same-sex desire and activity were not a major concern to the church or to lay society (writing in the late 1970s he used the terms “homosexuality” and “gay people”).¹ When Peter Damian wrote his *Book of Gomorrah* sometime around the middle of the eleventh century, the first major blast against same-sex relations among the clergy, the Pope declined to act on it.² Boswell argued that this changed in the thirteenth century, when legal systems began to adopt strict penalties (and sometimes enforce them) and churchmen, following in particular the lead of Thomas Aquinas, used the discourse of “nature” to cast any nonreproductive sex as deeply deviant. Joan Cadden has demonstrated that the discourse of “nature” was far from unitary. “Nature” could be understood in different ways, and medical commentators thought that it was in some men’s natures to desire penetration; but while this demonstrates that the concept of “natural” was indeed very complicated, these writers had to work against a backdrop of church doctrine.³

This article was originally written as the Presidential Address for the meeting of the Medieval Academy of America that was to have taken place at the University of California, Berkeley, in March 2020. The meeting was canceled because of the COVID-19 pandemic and the address delivered as part of a scaled-down virtual meeting, while the question-and-answer period had to be canceled because the meeting was Zoom-bombed by abusive trolls. I am therefore very grateful to the people who emailed me after the meeting with suggestions, including Thomas Dale and Keith Ruiter, and to people who commented on an earlier version I delivered at Oxford University, including Alice Raw, as well as to people with whom I discussed the project in progress or who answered specific questions, including Dyan Elliott, Nicholas Paul, Paul Halsall, Jonathan Rubin, and Jay Rubenstein. Andrew Buck read a draft and made many helpful comments. Hannah Skoda was responsible for the writing assignment that led me down this rabbit hole in the first place.

¹ John Boswell, *Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century* (Chicago, 1980). Scholarly reception of this work was somewhat mixed; see the historiographical reappraisal by Mathew Kuefler, “Homoeroticism in Antiquity and the Middle Ages: Acts, Identities, Cultures,” *American Historical Review* 123/4 (2018): 1246–66.

² On Peter Damian and the *Liber Gomorrhianus*, see Mark D. Jordan, *The Invention of Sodomy in Christian Theology* (Chicago, 1997), 45–66; Robert Mills, *Seeing Sodomy in the Middle Ages* (Chicago, 2015), 64–80; Larry Scanlon, “Unmanned Men and Eunuchs of God: Peter Damian’s *Liber Gomorrhianus* and the Sexual Politics of Papal Reform,” in *New Medieval Literatures*, vol. 2, ed. Rita Copeland, David Lawton, and Wendy Scase (Oxford, 1998), 38–64; William E. Burgwinkle, *Sodomy, Masculinity, and Law in Medieval Literature: France and England, 1050–1230* (Cambridge, UK, 2004) 53–65.

³ Joan Cadden, *Nothing Natural is Shameful: Sodomy and Science in Late Medieval Europe* (Philadelphia, 2013), passim.

R. I. Moore adopted Boswell's argument and connected it to a larger framework of the "formation of a persecuting society."⁴ This was the era in which the church set up legal frameworks to investigate heretics and Jews, but not, Moore suggests, because heretics were becoming a worse problem. He argues these apparatuses were a way for the emerging secular powers, in concert with the church, to establish and exert authority. The categorizing and persecution of religious and sexual deviance were thus part of the logic of developing institutions of power. Moore suggests that the persecution of what he calls "male homosexuality" came somewhat later than that of heretics and Jews, but he notes the Council of Nablus in the early twelfth century and the connection of sexual deviance with Islam, as well as with heresy. As I will argue, this connection was indeed central to the shift in the central Middle Ages toward the persecution of same-sex activity by secular authorities. The criminalization of same-sex activity in the Latin West may have been an unintended consequence of Western European polemic against Muslim societies.

This article will for the most part not deal with the church's attitudes toward same-sex relations, nor with the more positive aspects of same-sex relations in medieval culture. Scholars of medieval sexuality, particularly in the field of literature, have demonstrated the existence of subcultures of same-sex sex, love, and desire, whether expressed through identity, writing (including rich traditions of love poetry in many medieval languages), or action. There is much in the Middle Ages that is distinctly queer, and accepting of the queer. Here I discuss a grimmer reality about same-sex activity during this period: state violence against it, or the threat thereof.

Terminology in this area of study can be difficult. Michel Foucault famously connected the invention of the "homosexual" with bourgeois modernity: "Homosexuality appeared as one of the forms of sexuality when it was transposed from the practice of sodomy onto a kind of interior androgyny, a hermaphroditism of the soul. The sodomite had been a temporary aberration; the homosexual was now a species."⁵ In the realm of law, whence he originally derived it, Foucault's distinction between acts and identities does hold up better than it does in some other areas. It was not homosexuality, as an identity or way of being, that was criminalized, it was particular acts. Therefore, while I occasionally use "homosexual" as an adjective (for acts rather than persons), I stay mainly with "same-sex sexual activity." *Sodomy* is used here only where the Latin or medieval vernacular uses its cognate. It does not always refer to same-sex activity; indeed, Foucault called it an "utterly confused category" and suggested that, "as defined by the ancient civil or canonical codes, sodomy was a category of forbidden acts; their perpetrator was nothing more than the juridical subject of them."⁶ It could be used to denote any sort of sexual intercourse other than penis-in-vagina, man-on-top. It could also be used

⁴ R. I. Moore, *The Formation of a Persecuting Society: Authority and Deviance in Western Europe, 950–1250*, 2nd ed. (Oxford, 2007), 85–88. See the historiographical discussion of Moore's work in John H. Arnold, "Persecution and Power in Medieval Europe: *The Formation of a Persecuting Society*, by R. I. Moore," *American Historical Review* 123 (2018): 165–74.

⁵ Michel Foucault, *The History of Sexuality*, vol. 1, *An Introduction*, trans. Robert Hurley (New York, 1990), 43.

⁶ *Ibid.*

in a more generalized way to mean not specific activities but rather a general miasma of sexual sin.⁷ Therefore it must be considered carefully in context. Mark Jordan argued that it does not have a stable meaning in medieval theology but is associated with outsiders, and easily slips into metaphors of contagion.⁸ Often legal contexts do not use it at all. When it does appear in a legal context, it most often means sex between two men. To discuss same-sex relations as a sin in an ecclesiastical context, as in the enumeration of the various branches of lechery by late medieval moralists, writers most often used euphemisms: "sin against nature" or "unspeakable sin," the former of longer standing and the latter coming into use in the twelfth or thirteenth century.⁹

Sexual accusations as political tools against those in power were of course known in the Middle Ages, and not limited to same-sex relations.¹⁰ Henry IV, enemy of Pope Gregory VII and the church reform movement, was accused by churchmen of committing sexual sins with both genders.¹¹ These were rhetorical rather than practical accusations. It is hard to know how much real concern with behavior was behind them, and how much they merely reflect partisan mud-slinging; but this sort of mud was available to sling. Similarly, when Orderic Vitalis complains about the sodomy rampant at the Anglo-Norman court, it cannot be taken as a true account of the behavior there, but it is noteworthy that it is an accusation of sodomy rather than some other form of debauchery that he chooses to level at William Rufus's courtiers—a choice made clearer by the fact that he accuses the king himself of heterosexual debauchery.¹² In any case, political accusations in this period, the eleventh to twelfth centuries, did not bring with them prosecution. For the most part, secular law in Latin Christendom up through the central Middle Ages was not especially concerned with same-sex behavior.

The chronology in the Greek world is somewhat different, with Justinian issuing a novella in 538 calling for the death penalty for those engaged in crimes against

⁷ Helmut Puff, "Same-Sex Possibilities," in *The Oxford Handbook of Women and Gender in Medieval Europe*, ed. Judith M. Bennett and Ruth Mazo Karras (Oxford, 2013), 379–95, discusses the confused and confusing nature of the category, arguing that it is not possible to find an origin of the punitive use of the term *sodomy* because "Censorious discourses about same-sex sexual acts, including theological ones, are riddled with contradictions" (379).

⁸ Jordan, *The Invention of Sodomy*, 7.

⁹ On these terms—and making the argument that the unspeakability of the sin coincides chronologically with the requirement of the Fourth Lateran Council for annual confession—see Larry Scanlon, "Sex and Sexuality," in *The Oxford Handbook of Medieval Latin Literature*, ed. Ralph J. Hexter and David Townsend (Oxford, 2012), 447–64, esp. 455–61. Dyan Elliott discusses the emergence of the "sin against nature" and "unspeakable sin" in her *The Corrupter of Boys: Sodomy, Scandal, and the Medieval Clergy* (Philadelphia, 2020).

¹⁰ On political uses of sodomy accusations, Henric Bagerius, *Olydnadens söner: Sodomi som politiskt vapen i det senmedeltida Europa* (Stockholm, 2017).

¹¹ Elliott, *Corrupter*, 80.

¹² Orderic Vitalis, *Ecclesiastical History* 8.10, in *The Ecclesiastical History of Orderic Vitalis*, 6 vols., ed. and trans. Marjorie Chibnall (Oxford, 1969–80), 4:186–87. See Michael Goodich, *The Unmentionable Vice: Homosexuality in the Later Medieval Period* (Santa Barbara, 1979), 5; Mathew S. Kuefler, "Male Friendship and the Suspicion of Sodomy in Twelfth-Century France," in *Gender and Difference in the Middle Ages*, ed. Sharon Farmer and Carol Braun Pasternack, *Medieval Cultures* 32 (Minneapolis, 2003), 145–81, at 163; and Mills, *Seeing Sodomy*, 182–83.

nature.¹³ Justinian’s *Institutes* also followed some earlier Roman interpretations of the *Lex Iulia de adulteriis*, providing the death penalty for adultery, which included same-sex activity between males.¹⁴ Procopius reports that some men were punished with castration even though this was not provided in the law, and suggests that accusations of unnatural activity were used as a way of attacking political enemies.¹⁵ But Angeliki Laiou points out that although the death penalty for sodomy can be found in later Byzantine law, the examples are much earlier, and by the central Middle Ages commentators who read these passages were not providing contemporary examples, as they were for other crimes.¹⁶

A turning point for the prosecution of same-sex activity in Western Europe, although it did not take place in Western Europe, came already in the twelfth century, well before Boswell’s invocation of thirteenth-century understandings of “nature.” An assembly at Nablus in the Latin Kingdom of Jerusalem in 1120 provided for exile, mutilation, or death for a number of sexual offenses. This assembly, often referred to as a council in modern scholarship but called a *conventus publicus et curia generalis* by William of Tyre, the one chronicler to mention it, was called by both the patriarch and the king of Jerusalem and was attended by lay as well as ecclesiastical officials.¹⁷ The basic purpose of the council was to resolve the investiture conflict for the kingdom of Jerusalem: the first three canons constitute what is called the Concordat of Nablus, in which the king and nobility granted complete control of tithes to the church.¹⁸ The canons then continue, however, to regulate other activity, including what has been called the first dress code legislation in Europe (forbidding Franks from dressing in Saracen clothing) and a number of canons on sexual activity. The latter prescribe extremely harsh punishments. For example, canon 5 provides an unprecedented punishment for adultery on the part of a man: “Whoever shall be proved to have lain with the wife of another, the sentence of the court having been heard, shall be emasculated, and shall be expelled from this land. The adulteress shall have her nose cut off, unless her husband wishes to show mercy to her. If he does so, let them both cross the sea.”¹⁹ Roman law had given the husband the right under some circumstances to kill the couple if they were in flagrante, but the

¹³ Samuel Scott, trans., *The Civil Law: Including the Twelve Tables, the Institutes of Gaius, the Rules of Ulpian, the Opinions of Paulus, the Enactments of Justinian, and the Constitutions of Leo*, 17 vols. (Cincinnati, 1932), 16:288–89; see also 17:160–61 and Derrick Sherwin Bailey, *Homosexuality and the Western Christian Tradition* (London, 1955), 73–79.

¹⁴ *Justinian’s Institutes* 4.18.4, trans. Peter Birks and Grant McLeod and including the Latin edition of Paul Krueger (London, 1987), 144–45.

¹⁵ See Stephen Morris, “When Brothers Dwell in Unity”: *Byzantine Christianity and Homosexuality* (Jefferson, NC, 2016), 61–64.

¹⁶ Angeliki E. Laiou, *Mariage, amour et parenté à Byzance aux XI–XIIIe siècles*, Travaux et Mémoires du Centre de Recherche d’Histoire et Civilisation de Byzance Monographies 7 (Paris, 1992), 76.

¹⁷ William of Tyre, *Chronicon* 12.13, ed. R. B. C. Huygens, *Willelmi Tyrensis Archiepiscopi Chronicon*, 2 vols., CCCM 63–63A (Turnhout, 1986), 1:563.

¹⁸ Hans Eberhard Mayer, “The Concordat of Nablus,” *Journal of Ecclesiastical History* 33/4 (1982): 531–43. Mayer notes that although sexual offenses were considered to be within the church’s purview, a number of the provisions were clearly secular in nature.

¹⁹ The text of the Nablus canons is edited in Benjamin Z. Kedar, “On the Origins of the Earliest Laws of Frankish Jerusalem: The Canons of the Council of Nablus, 1120,” *Speculum* 74/2 (1999): 310–35 (333 for canon 5).

state provided only the punishment of exile. Leviticus did prescribe the death penalty, although it was not enforced in Jewish law after the destruction of the Temple; Christ's admonition to the crowd, "Let he who is without sin cast the first stone," was a response to this law. The church condemned adultery by both men and women, set penance for it, and sometimes allowed a husband to repudiate his wife for it, although not to marry another.²⁰ The canons of Nablus also provided castration or other maiming for other sexual crimes, in particular those across religious lines, for example, canons 12–13: "If a man is proved to have knowingly lain with a Saracen woman, let his penis be cut off, and let her nose be cut off. If a man rapes his own Saracen woman, let her be enslaved to the fisc, and let his testicles be cut off."²¹

The punishment for sodomy was even harsher: burning. The canons made a distinction between the active and the passive partner, although only to emphasize that both were to be subject to punishment (if adults): "If any adult is proven to have defiled himself willingly with sodomitical depravity, both the active and the passive partner shall be burned."²² Canon 10 seems to imply that regardless of age the passive partner could be a victim of rape: "If someone, having suffered sodomitic wickedness by force, conceals it and permits himself to be polluted again and does not declare it to justice, and it shall afterward be proved, let them be judged as a sodomite." Canon 9, however, suggests that this is more likely a child or old person: "If a child or aged person is defiled by force by a sodomite and raises an outcry, the sodomite shall be given over to the flames."²³ In medieval monasteries, as discussed by Elliott, or in the subculture of medieval Florence described by Michael Rocke, sodomy is an age-patterned offense, mature men or older boys with younger boys.²⁴ The inclusion of elders as victims here suggests that this is perhaps not a matter only of desire, shaped by the cultural division into active masculine and passive effeminate, but also of physical strength. It is noteworthy in the canons of Nablus, as in so many other contexts, that the only sexual behavior by women that is a matter of explicit concern is with men, particularly men of other groups, but it is possible that the masculine singular is meant to be inclusive; burning, unlike castration, could be applied to either sex. The death penalty here suggests that sodomy was considered the most serious of the offenses, although burning was specified only for the third offense; the first could be expiated with penance, the second with penance and expulsion from the kingdom.

We do not know to what extent these laws were put into force. One point that suggests that they were not is the use of the different language for mutilation for

²⁰ Secular law in different jurisdictions provided a variety of punishments for adultery, which could include death, often by equating adultery with treason. See, for example, Paul Strohm, *Hochon's Arrow: The Social Imagination of Fourteenth-Century Texts* (Princeton, 1992), 121–44. For the general legal treatment of female adultery in the Middle Ages, see Leah Otis-Cour, "'De jure novo': Dealing with Adultery in the Fifteenth-Century Toulousain," *Speculum* 84/2 (2009): 247–92, esp. 347–55.

²¹ Edited in Kedar, "On the Origins," 333. Canon 15 also provides for the punishment of a (Christian) woman who has sex with a Saracen man.

²² Canon 8, edited in Kedar, "On the Origins," 333. I use "themselves" rather than "himself" to indicate that, while this passage seems to refer to men, it could be using *se* as gender-neutral or inclusive.

²³ Canon 9, edited in Kedar, "On the Origins," 333.

²⁴ Elliott, *The Corrupter of Boys*; Michael Rocke, *Forbidden Friendships: Homosexuality and Male Culture in Renaissance Florence* (New York, 1996).

sexual crimes. Four different terms are used for the genital mutilation of men (*eviretur*, *ementuletur*, *extesticulatur*, *eunuchizabitur*), and two for the nasal mutilation of women (*enasetur*, *naso curtetur*). The different punishments are for different offenses and it is possible that things were so finely calibrated that a different kind of mutilation happened for different offenses, but not in all cases: “emasculate” and “eunuch-ize” must also be the same thing as removal of either the penis or testicles or both. Two different terms are also used for burning for sodomy: *comburatur*, *flammis tradatur*. This is very likely to be elegant variation, whether in terminology for the same thing or in thinking up an appropriate punishment that was not (as yet) practiced. As Klaus van Eickels suggests, the use of language is an indication that the canons were intended to be largely symbolic, a statement of the moral stance of the ecclesiastical and lay authorities, realigning the community with God by placing extremely harsh punishments on behavior believed to contradict God’s law.²⁵ It sounds much too careful to be a codification of current practice. The fact that William of Tyre is the only chronicler to mention the council—Fulcher of Chartres says nothing about it—and that he does not list the canons but simply says that copies were placed in all the churches, suggests too that the canons were not intended to be practical law; for William it was important that the council or *conventus* had placed the king and patriarch of Jerusalem in positions as leaders of the Latin East.²⁶ Indeed, it is not certain that the canons as found in the Sidon manuscript are exactly those enacted at the council.

The context is important here, especially as the king’s predecessor Baldwin I may have, as Jay Rubenstein puts it, “lived in a chainmail closet” and had male Muslim or ex-Muslim lovers.²⁷ Certainly sexual contact between members of the different communities in the Latin East was not unknown: Baldwin I and Baldwin II married

²⁵ Klaus von Eickels, “Die Konstruktion des Anderen. (Homo)sexuelles Verhalten als Element des Sarazenenbildes zur Zeit des Kreuzzüge und die Beschlüsse des Konzils von Nablus 1120,” in “*Die sünde, der sich der tiuvel schamet in der helle*”: Homosexualität in der Kultur des Mittelalters und der frühen Neuzeit, ed. Lev Mordechai Thoma and Sven Limbeck (Ostfildern, 2009), 43–61.

²⁶ My thanks to Andrew Buck for pointing out this possibility.

²⁷ Jay Rubenstein, *Nebuchadnezzar’s Dream: The Crusades, Apocalyptic Prophecy, and the End of History* (Oxford, 2019), 90–91. Malcolm Barber refers to Baldwin’s “probable homosexuality” on the grounds that he was married three times but had no children, as well as to the comments of chroniclers about his licentiousness: Malcolm Barber, *The Crusader States* (New Haven, CT, 2012), 113; Christopher Tyerman agrees, *God’s War: A New History of the Crusades* (London, 2006), 202. Hans Eberhard Mayer, *Mélanges sur l’histoire du royaume latin de Jérusalem*, Mémoires de l’Académie des Inscriptions et Belles-Lettres Nov. Sér. 5 (Paris, 1984), 70–72, suggests that William of Tyre’s bluntness about Amalric I’s relationships with women, combined with his vagueness about the nature of Baldwin’s sexual sins, points to those sins being with men. Susan B. Edgington, *Baldwin I of Jerusalem, 1100–1118* (Abingdon, 2019), 181, is doubtful about the claim, and says that it does not matter in any case because “contemporaries did not comment on it or apparently condemn it.” For William of Tyre’s account of Baldwin’s relationship with his chamberlain, see *Chronicon* 11.14, 1:518; William Archbishop of Tyre, *A History of Deeds Done beyond the Sea*, trans. Emily Atwater Babcock and A. C. Krey, 2 vols. (New York, 1943), 1:487–88; for his licentiousness (“Yet so circumspectly did he conduct himself in the indulgence of these vices [‘lustful sins of the flesh’] that he was a stumbling block to no one. Neither did he inflict violence or great endure on anyone; in fact, a thing rare in such cases, only a few of his personal attendants were aware of his licentious habits”), *A History of Deeds* 10.2, 1:454 (Huygens ed.), 1:416 (trans.).

Armenian Christians, as did many other Franks.²⁸ Marriage between Christians of different communities, however, was very different from sexual relations between Christians and Muslims, which could not be recognized as marriage; in addition, it was different from sexual activities between two men. The major military defeat suffered by an Antiochene army in 1119 (the "Field of Blood") may have prompted the attendees at the council to assert a particularly strong moral code of conduct, a performance of purity, particularly directed against sexual misbehavior with non-Christians, who could have been a threat in the case of invasion.²⁹ But the focus on purity need not be solely a direct result of that battle. In the early years of Outremer there was a general sense of being a frontier society and a consequent concern about behavior that might put the community at physical or moral risk. The Franks thought of themselves as the heirs of Biblical leaders like Joshua, who had counseled the Israelites to remain pure (Joshua 23), refraining from intermarriage and idolatry among other things.³⁰

Benjamin Kedar has demonstrated that the canons of Nablus resemble Byzantine legal issuances, and suggests the direct or indirect influence of the *Ecloga*, dating from 741 on some of the punishments. This influence may have come via the local Greek Christian population. Castration as punishment appears in the *Ecloga*, though not specifically for the offenses for which the Nablus canons prescribe it. The punishment for adulteresses in Nablus—having the nose cut off—resembles that in the *Ecloga*, where the same punishment was applied to men as well for various offenses. Death by the sword is the punishment for male-male sex, although the "passive" partner may be spared if underage, and penectomy is the punishment for bestiality.³¹ Van Eickels points out that castration was practiced in Norman realms, although nowhere else, as a punishment for political offenses, and many of the lords and ecclesiastics in the kingdom of Jerusalem would have been familiar with it from there.³² It is found occasionally in Western Europe for various offenses, such as bestiality in a Frisian text from the thirteenth century, or treason in fourteenth-century England.³³ Discussion of castration as punishment does not turn up in other legal texts from the Latin East.³⁴ It could be that its use here, taken from Greek law, was an effort to position the Latin leaders as leaders of all the Christians in the region.

²⁸ Christopher MacEvitt, *The Crusades and the Christian World of the East: Rough Tolerance* (Philadelphia, 2008), 76–78.

²⁹ I thank Nicholas Paul for this formulation.

³⁰ On Joshua, see Katherine Allen Smith, *The Bible and Crusade Narrative in the Twelfth Century* (Woodbridge, UK, 2020), 80, 122.

³¹ Edited in Kedar, "On the Origins"; *Ecloga: Das Gesetzbuch Leons III. und Konstantinos' V.* 17.24–39, ed. Ludwig Burgmann, *Forschungen zur Byzantinischen Rechtsgeschichte* 10 (Frankfurt am Main, 1983), 232–39. For English translation, see *The Laws of the Isaurian Era: The "Ecloga" and its Appendices*, trans. Mike Humphreys, *Translated Texts for Byzantinists* 3 (Liverpool, 2017), 73–75.

³² Klaus van Eickels, "Gendered Violence: Castration and Blinding as Punishment for Treason in Normandy and Anglo-Norman England," *Gender & History* 16/3 (2004): 588–602.

³³ Scholarship summarized in Larissa Tracy, "Introduction," in *Castration and Culture in the Middle Ages*, ed. Larissa Tracy (Cambridge, UK, 2013), 1–28, at 19–24.

³⁴ See Jonathan Rubin, *Learning in a Crusader City: Intellectual Activity and Intercultural Exchanges in Acre, 1191–1291*, *Cambridge Studies in Medieval Life and Thought Fourth Series* 110 (Cambridge, UK, 2018), on the various learned legal traditions at the time.

There is a certain logic to castration as a punishment for sexual offenses. The point of harsh punishments for adultery in the ancient world, at least ostensibly, was to maintain the integrity of the bloodline. This is why an adulterer under Roman law was a married woman who had sex with a man not her husband, or a man who had sex with someone else's wife. Christianity brought with it a theoretical repudiation of the sexual double standard, so that a married man who had sex with a woman not his wife could be considered an adulterer also, although this definition was not universally accepted. For the man who slept with another's wife, castration as punishment was not just the removal of the limb with which the offense had been committed, although that was certainly a traditional motive for various kinds of punishments.³⁵ It also was a removal of the ability to reproduce. The tight link between male-female intercourse and reproduction gave rise to what Patricia Simons has called a “semenotic” economy, in which the ability to produce seed, not the size of the penis, was important.³⁶ Castration for rape appeared in other European legal traditions, notably England, in laws attributed to William the Conqueror and in the early-thirteenth-century treatise *Bracton*, although again it is not clear that this penalty was ever applied in practice.³⁷

Sex between men in the canons of Nablus did not fit into this punishment-fits-the-crime model; the punishment there was death, the first time in Western European culture that this was the case. Even the Visigothic law from 653, one of the harshest, had provided castration and perpetual imprisonment for men who had sex with other men (*masculorum concubitores*). We know little about the enforcement of such a law, or indeed the motivations behind it.³⁸ We do have the witness of Johannes Malalas that Justinian enforced his own ruling requiring the castration of men involved in same-sex relations, a century before, which may have influenced the Visigothic law.³⁹ But Nablus was harsher, providing death like the *Ecloga*.

It is in the century thereafter that we find a similar punishment in Western Europe. The *Livres de justice et de plet*, written in the thirteenth century in the Orléans region, punishes sodomy by combining the penalty of burning as provided for sodomy in Nablus and castration as provided there for other crimes. This thirteenth-century development in French law may have been directly influenced by laws and attitudes

³⁵ See Jacqueline Murray, “The Battle for Chastity: Miraculous Castration and the Quelling of Desire in the Middle Ages,” *Journal of the History of Sexuality* 28/1 (2019): 96–116.

³⁶ Patricia Simons, *The Sex of Men in Premodern Europe: A Cultural History* (Cambridge, UK, 2001), 2 and passim; 158–90 on the economic aspects.

³⁷ See Caroline Dunn, *Stolen Women in Medieval England: Rape, Abduction, and Adultery, 1100–1500*, Cambridge Studies in Medieval Life and Thought Fourth Series 87 (Cambridge, UK, 2013), 27. Dunn notes that while the punishment of castration was new, the law on rape otherwise was quite close to that in the pre-Conquest era.

³⁸ *Leges Visigothorum* 3.5.4, ed. Karl Zeumer, MGHLL nat. Germ. 1 (Hannover, 1902), 163; Boswell, *Christianity, Social Tolerance, and Homosexuality*, 175–76.

³⁹ Boswell, *Christianity, Social Tolerance, and Homosexuality*, 172; see also Bailey, *Homosexuality and the Western Christian Tradition*, 78, citing Gibbon citing Theophanes and Procopius. See Angeliki E. Laiou, “Law, Justice, and the Byzantine Historians: Ninth to Twelfth Centuries,” in *Law and Society in Byzantium, Ninth–Twelfth Centuries*, ed. Angeliki E. Laiou and Dieter Simon (Washington, DC, 1994), 151–85, at 157–58, on the tenuous knowledge that these historians had about Justinian's legislation.

in Outremer. The *Livres de justice et de plet* is noteworthy as the first example of secular law explicitly prohibiting women's same-sex activity.⁴⁰ The term *sodomy* is used here to cover both, suggesting that women should perhaps be understood as included elsewhere. The canons of Nablus use masculine forms in talking about sodomy, but it is possible it is intended in a non-gender-specific way. Phrases like *sin[s] against nature* can apply to both men and women, although the vast majority of cases we have involve men, and modern historical work reflects this. Although Boswell's book title referred to "gay people" he mainly discusses men.

Judith Bennett considers some of the reasons historians have given for why same-sex relationships between women do not appear very often in the sources: they did not bother people because they did not prevent women from bearing children to legal husbands, because they did not involve penises, because they did not involve sperm, and because of pervasive misogyny that made anything women did not matter very much.⁴¹ Much of the evidence for criminalization refers to men. Helmut Puff has identified several cases in late medieval Germany, but in the one he discusses in most detail, the offense was only described, not labeled either "sodomy" or anything else.⁴² Both male and female same-sex relations were assimilated to a cross-sex pattern where one partner played the male and one the female role. In some jurisdictions, however, "sodomy" was used for a crime committed by women: Jonas Roelens has demonstrated this for the southern Netherlands.⁴³

The *Livres* prescribed castration and then loss of member for men involved in same-sex acts, and loss of a member for women. The member is not specified; one may assume that it is the penis for men. Louis Crompton suggests that the juxtaposition of the passages on men and women indicate that the woman would lose an "equivalent member" to the man's castration, i.e., clitoridectomy.⁴⁴ However, as far as I can find, this is not attested elsewhere as a medieval punishment for anything.⁴⁵ The Nablus canons, with the combination of castration and rhinectomy for adultery, suggest that the woman's facial mutilation might be considered the equivalent. Rhinectomy, which goes back to the ancient world as a punishment for

⁴⁰ Louis Crompton, "The Myth of Lesbian Impunity: Capital Laws from 1270 to 1791," *Journal of Homosexuality* 6/1–2 (1980–81): 11–25.

⁴¹ Judith M. Bennett, *History Matters: Patriarchy and the Challenge of Feminism* (Philadelphia, 2006), 111–12; this chapter uses material from her article "'Lesbian-Like' and the Social History of Lesbianisms," *Journal of the History of Sexuality* 9 (2000): 1–24.

⁴² Helmut Puff, "Female Sodomy: The Trial of Katherina Hetzeldorfer (1477)," *Journal of Medieval and Early Modern Studies* 30/1 (2000): 41–61.

⁴³ Jonas Roelens, "Visible Women: Female Sodomy in the Late Medieval and Early Modern Southern Netherlands (1400–1550)," *Bijdragen en Mededelingen Betreffende de Geschiedenis der Nederlanden: Low Countries Historical Review* 130/3 (2015): 3–24, <https://doi.org/10.18352/bmgn-lchr.10101> (last accessed 26 June 2020).

⁴⁴ Crompton, "The Myth of Lesbian Impunity," 13.

⁴⁵ There is some scholarly disagreement on medieval awareness of the clitoris as an organ. See Karma Lochrie, *Heterosyncrasies: Female Sexuality when Normal Wasn't* (Minneapolis, 2005), 71–89; Katharine Park, "The Rediscovery of the Clitoris: French Medicine and the Tribade, 1570–1620," in *The Body in Parts: Fantasies of Corporeality in Early Modern Europe*, ed. David Hillman and Carla Mazzio (London, 1997), 170–93.

women, appears for example in religious texts (in which nuns self-mutilate to avoid being raped)⁴⁶ and in literary ones (as in Marie de France’s *Bisclavret*, in which the werewolf bites off the nose of his adulterous wife).⁴⁷ It also was used as a punishment in Western Europe, as in the *Constitutions of Melfi* of Frederick II of Sicily, in a law of Roger II from around 1140: it is a more lenient punishment than being killed by her husband, although if her husband did not wish to punish her she would be publicly flogged.⁴⁸ This may be a Byzantine borrowing, as is possibly the law of Cnut of England from 1027–34 prescribing that an adulterous woman should lose her nose and ears.⁴⁹ Cnut also seems to have used this punishment on men.⁵⁰ Valentin Groebner cites a long history of rhinectomy as either judicial or extrajudicial punishment, especially for sex offenders both male and female, since antiquity, and suggests that it sometimes symbolized or was parallel to castration.⁵¹ It could also be an example of the loss of the member with which one sinned—in this case, not just the nose but the entire face, the idea being that a woman’s beauty was the occasion of sin. Punishment of

⁴⁶ On this tradition, see Jane Tibbetts Schulenburg, “The Heroics of Virginity: Brides of Christ and Sacrificial Mutilation,” in *Women in the Middle Ages and the Renaissance: Literary and Historical Perspectives*, ed. Mary Beth Rose (Syracuse, NY, 1986), 29–72; and Claude Thomasset, “La femme sans nez,” in *Littérature et médecine*, vol. 2, ed. Jean-Louis Cabanès, Eidôlon 55 (Bordeaux, 2000), 57–62.

⁴⁷ Marie de France, *Bisclavret*, line 235, in *Lais*, ed. Alfred Ewert (Oxford, 1944), 55. See Patricia Skinner, “The Gendered Nose and Its Lack: “Medieval” Nose-Cutting and Its Modern Manifestations,” *Journal of Women’s History* 26/1 (2014): 45–67; Thomasset, “La femme sans nez;” Karl Steel, “Got Your Nose: Bisclavret Defaces His Wife,” *In the Middle* (blog), 13 June 2012, <http://www.inthemedievalmiddle.com/2012/06/got-your-nose-bisclavret-defaces-his.html> (last accessed 29 November 2019), provided me with useful pointers to bibliography on this. See Bonnie Millar, “Dis/enabling Courtesy and Chivalry in the Middle English and Early Modern Gawain Romances and Ballads,” in *Approaching Facial Difference: Past and Present*, ed. Patricia Skinner and Emily Cock (London, 2018), 11–25, for the importance of facial disfigurement in later Arthurian literature.

⁴⁸ *Die Konstitutionen Friedrichs II. für das Königreich Sizilien* 3.74, ed. Wolfgang Stürner, MGH Const. 2 Suppl. (Hannover, 1996), 439 dMGH, https://www.dmgH.de/de/fs1/object/display/bsb00000802_00447.html?sortIndex=020%3A050%3A0002%3A020%3A00%3A00&zoon=0.75 (last accessed 29 November 2019). *The Liber Augustalis: Or Constitutions of Melfi Promulgated by the Emperor Frederick II for the Kingdom of Sicily in 1231*, trans. James M. Powell (Syracuse, NY, 1971), 145, translates this as “the slitting of her nose,” which is how it is often phrased in English, but this is the same as rhinotomy or rhinectomy. The Latin *nasi truncatione* clearly points to cutting off.

⁴⁹ *Die Gesetze der Angelsachsen* 2 Cnut 53, ed. Felix Liebermann, 4 vols. (Halle, 1903–16), 1:348. As Timothy Bolton points out, Cnut was quite well-travelled, cosmopolitan, and involved in European politics: Bolton, *Cnut the Great* (New Haven, 2019), 158–171.

⁵⁰ As a general set of punishments in Cnut’s laws to be applied with judicial discretion (including blinding and scalping), Andrew Reynolds, *Anglo-Saxon Deviant Burial Customs* (Oxford, 2009), 260, and in the entry for the “Anglo-Saxon Chronicle” for 1014 (cutting off hands and noses of hostages, and in two manuscripts also ears): *The Anglo-Saxon Chronicle*, ed. and trans. M. J. Swanton (London, 1996), 145–46. See discussion of judicial violence in general under Cnut in Keith Ruiter and Steven P. Ashby, “Different Strokes: Judicial Violence in Viking-Age England and Scandinavia,” *Viking and Medieval Scandinavia* 14 (2018): 153–84.

⁵¹ Valentin Groebner, “Losing Face, Saving Face: Noses and Honour in the Late Medieval Town,” trans. Pamela Selwyn, *History Workshop Journal* 40 (1995): 1–15, at 5; the article appeared in slightly different form in Valentin Groebner, *Defaced: The Visual Culture of Violence in the Late Middle Ages*, trans. Pamela Selwyn (New York, 2004), 67–86. In hagiography, amputation of the breasts appears as a punishment for women more often than rhinectomy; see Larissa Tracy, *Torture and Brutality in Medieval Literature: Negotiations of National Identity* (Woodbridge, UK, 2012), 31–69.

feminine lust in Hell via the breasts and genitalia appears in medieval sculpture, for example in the porch at Moissac.⁵²

In the *Livres*, as punishment for sodomy, the member the woman is to lose for the first and second offense may also be a breast, or a limb, and conceivably a man could be condemned to lose a limb too. Or the second offense may have been the ears. Or the author/compiler might not have had a clear idea of what was intended, merely trying to create balance. The text is not an official compilation, although it claims to be the laws of the kingdom of France; it may have been made by a student or scholar for his own use. Much of it is a translation of Justinian’s *Digest*, as well as the customs of the Orléannais. The provision on sodomy is found in a set of punishments said to be current in the duchy of Orléans. It is not clear that they reflect contemporary practice. There are other crimes listed as punishable by death, a few by burning but most by hanging. The only other one for which the punishment is mutilation, however, is where someone has caused someone else to lose a member, and is punished by the loss of one. The idea both of castration as punishment for sexual crime and of secular punishment for sodomy are new and unusual here and could well have come from the crusader states.⁵³

The *Coutumes de Beauvaisis*, compiled in the thirteenth century by Philippe de Beaumanoir—again, a textbook, not a promulgated code—like the canons of Nablus, prescribed burning for sodomy. After listing drawing and hanging as punishment for treason, murder, manslaughter, or rape, and hanging for arson and theft, it provides: “Whoever errs against the faith and does not wish to return to the way of truth, or who commits sodomy, he must be burned and forfeit all his goods.”⁵⁴ Alfonso of Castile’s mid-thirteenth-century *Siete Partidas* also provided death for sodomy. The section on sodomy is quite brief as to the penalty, but goes into much more detail with regard to the definition of sodomy (a sin that men commit with each other; women do not come into it) and the extent to which God hates it.⁵⁵ Alfonso may have used sodomy along with treason as an accusation against his political enemies.⁵⁶ We

⁵² The classic discussion of this is Meyer Schapiro, “The Romanesque Sculpture of Moissac, Part I (2),” *Art Bulletin* 13/4 (1931): 464–531, at 499–504.

⁵³ Andrew Buck suggests to me that some authors in the first part of the thirteenth century, for example Jacques de Vitry, were very critical of the settlers in the Latin East, and thus finds it surprising that “their law might have been taken on as the standards for moral/legal behaviours,” suggesting that the canons as we have them may not reflect what was actually legislated at the council but rather “have been modified to fit practices elsewhere in order to try and protect the memory of the Latin East as it fell apart” (pers. comm., 17 April 2020). The manuscript of the canons, however, does come from Outremer and to the extent the legislation was modified it would have been done there rather than in France.

⁵⁴ Philippe de Beaumanoir, *Coutumes de Beauvaisis* 30.833, ed. A. Salmon, 2 vols., Collection de Textes pour Servir à l’Étude et à l’Enseignement de l’Histoire 24, 30 (Paris, 1899–1900), 1:431. Translation here is mine, but see F. R. P. Akehurst, trans., *The “Coutumes de Beauvaisis” of Philippe de Beaumanoir* (Philadelphia, 1992), 305. It is possible that women are intended to be included here in the use of the male pronoun.

⁵⁵ Alfonso X of Castile, *Las siete partidas del Rey don Alfonso el Sabio, cotejadas con varios codices antiguos por la Real Academia de la Historia* 7.21, 3 vols. (Madrid, 1807), 3:664–65.

⁵⁶ Roberto J. González-Casanovas, “Male Bonding as Cultural Construction in Alfonso X, Ramon Llull, and Juan Manuel: Homosocial Friendship in Medieval Iberia,” in *Queer Iberia: Sexualities, Cultures, and Crossings from the Middle Ages to the Renaissance*, ed. Josiah Blackmore and Gregory S. Hutcheson (Durham, NC, 1999), 157–92, at 167.

also find the death penalty for sodomy in two late thirteenth-century English texts: *Fleta*, in Latin, which stipulates burial alive, and *Britton*, in French, which stipulates burning. In each case, sodomites are included in a list of criminals to be punished in this manner.⁵⁷ It is noteworthy that none of these texts, whether from France, Castile, or England, is a piece of legislation (except perhaps the *Siete Partidas*, which were not put into practice): all are treatises presenting what purports to be custom but in an idealized way. They could have looked for models and found them in the canons of Nablus.

What is the relation, then, between the canons of Nablus and these Western European laws? Adam Bishop suggests that the inclusion of the burning of what he calls “adult homosexuals” in the Nablus canons “was a common punishment for homosexuals in the High Middle Ages.”⁵⁸ This is not, however, the case until the thirteenth century; the canons of Nablus opened up new territory here. The burgess assizes, the urban law of the Kingdom of Jerusalem from the mid-thirteenth century, follow suit and cite scripture, not specifically on the seriousness of this or other crimes, but on the justification for the death penalty generally: the title of the chapter says in Latin, “of a witch, whom you shall not suffer to live” and then in French, “Of murderers and sodomites and evildoers we will speak afterward.” The chapter then, as the heading states, speaks of the Mosaic prohibitions on witchcraft and homicide; the following chapter, in French, lists those whom “law and reason” command should be put to death.⁵⁹ The burning of sodomites was not, as Bishop points out, taken from biblical law despite the claims of this passage; rather, it seems to have come from the canons of Nablus.⁶⁰

If Nablus broke the ground, can thirteenth-century treatises from Europe have been influenced by its canons? I cannot demonstrate that they were, but they certainly could have been. Nablus was ahead of its time on clothing regulations: John Tolan takes the strictures of Nablus against Muslims wearing Frankish garb as “in the same spirit as” the Fourth Lateran Council a century later, which required

⁵⁷ *Fleta* 1.35, ed. and trans. H. G. Richardson and G. O. Sayles, 3 vols., Selden Society 72, 89, 99 (London, 1955–84), 2:90 (*sodomite*). The French text *Britton* 1.10, ed. and trans. Francis Morgan Nichols, 2 vols. (Oxford, 1865), 1:42, mentions “sodomites” among a list of felons who may be burned, although a note in one early-fourteenth-century manuscript (Cambridge, Cambridge University Library, MS DD.vii.6) says that normally these should be delivered by the ecclesiastical court to the king’s court. In both these cases the heading on the chapter deals with arson, while the sodomites, heretics, etc. seem to be an afterthought.

⁵⁸ Adam M. Bishop, “‘As it is Said in Scripture and in Law’: The Bible in the Crusader Legal System,” in *The Uses of the Bible in Crusader Sources*, ed. Elizabeth Lapina and Nicholas Morton, Commentaria 7 (Leiden, 2017), 440–54, at 446. Bishop, 447, cites Boswell, *Christianity, Social Tolerance, and Homosexuality*, 174–79, on the possibility that this was simply the standard penalty and they were providing a justification for it; but Boswell is talking about the Visigothic code as unique.

⁵⁹ *Assises de la basse cour* 270–71, in *Les Livres des assises et des usages dou reaume de Jerusalem, sive Leges et instituta regni Hierosolymitani*, ed. E. H. Kausler (Stuttgart, 1839), 1:328–29.

⁶⁰ Jonathan Rubin (pers. comm., 15 May 2020) suggests that the canon law treatise of John of Ancona, written in Acre between 1240 and 1260, would be a good place to look for the legal treatment of sodomy in Outremer. This work has not been edited; it exists in a fourteenth-century manuscript (Bruges, Openbare Bibliotheek, MS 377). The treatise is based on one by Goffredus Tranensis (Gottofredo de Trani), which mentions that “abusers of boys” are to be capitally punished. Goffredus de Trano, *Summa super titulis Decretalium* (Lyon, 1519; repr. Aalen, 1968), 435. A comparison with the John of Ancona manuscript to see whether the latter develops this further is beyond the scope of this article.

that Muslims and Jews be distinct from Christians in their dress and specified the reason as the avoidance of intergroup sex.⁶¹ This could well have been not just the same spirit, but based on knowledge of the Nablus canons. According to William of Tyre, copies of the canons of Nablus were placed in every church in the kingdom of Jerusalem; even given William's tendency to exaggerate, we can assume that there were multiple copies made. Only one has survived, from the church of Sidon. The manuscript, containing other legal material as well, ended up in the library of the Avignon popes, possibly brought by Rostagnus Candola, the last bishop of Sidon, who is known to have been in Avignon between 1319 and 1327.⁶² Other copies (or knowledge of the canons) may have ended up in Europe earlier but are not attested. As James Brundage points out, however, there were a number of European jurists who are attested in the Latin East for a period of one or several years at a time, and who may have returned to Europe.⁶³ Their training would have been in Roman and canon rather than in customary or royal law, but as the *Livres de justice et de plet* is in large part a translation from or summary of Roman law, it is entirely plausible that the person who compiled it had studied with (or was) a trained Romanist who had worked in Outremer. Of course, it need not be a whole law book or set of canons that became known in Western Europe. Particular details could have been transmitted even if we do not know the textual mechanism.⁶⁴

Same-sex eroticism was certainly not imported to Europe from the Middle East, nor am I arguing here that it became more common in the twelfth century. Rather, I suggest that it became at that time something to worry more seriously about, because it was a convenient source of blame and opprobrium for Muslims.⁶⁵ Not only in relation to sodomy, sexual activity was often seen as a place where a line must be drawn in terms of intercultural contact.⁶⁶ Women's bodies might become a border that could not be crossed. This is clearly observable in the canons of Nablus. The sexual depravity of Turks and Saracens (sometimes, but often not, interchangeable

⁶¹ John V. Tolan, *Saracens: Islam in the Medieval European Imagination* (New York, 2002), 196–97.

⁶² On this manuscript and others, see Miriam Rita Tessera, "Dalla liturgia del Santo Sepolcro alla bibliotheca di Sidone: Note sulla produzione libraria latina di Oltremare nel XII–XIII secolo," *Aevum* 79/2 (2005): 407–15, esp. 413–15; Anneliese Maier, "Die Handschriften der 'Ecclesia Sidonensis,'" *Manuscripta* 11/1 (1967): 39–45, at 44. The manuscript is now Vatican City, Biblioteca Apostolica Vaticana, MS Vat. lat. 1345; the canons are on fols. 1r–3r. The manuscript has been digitized and is available at https://digi.vatlib.it/view/MSS_Vat.lat.1345.

⁶³ James A. Brundage, "Latin Jurists in the Levant: The Legal Elite of the Crusader States," in *Crusaders and Muslims in Twelfth-Century Syria*, ed. Maya Shatzmiller, The Medieval Mediterranean 1 (Leiden, 1993), 18–42; see 42 for numbers of jurists attested.

⁶⁴ Jonathan Rubin points out an example of the transmission of information about particular drug ingredients from Outremer to Western Europe, where we do not know of a particular text or manuscript that carried it: Rubin, "The Use of the 'Jericho Tyros' in Theriac: A Case Study in the History of the Exchanges of Medical Knowledge Between Western Europe and the Realm of Islam in the Middle Ages," *Medium Aevum* 83/2 (2014): 234–53.

⁶⁵ I do not here discuss the Rule of the Templars, the original version of which (from 1129) does not mention same-sex activity, although later additions do so. J. M. Upton-Ward, trans., *The Rule of the Templars: The French Text of the Rule of the Order of the Knights Templar*, Studies in the History of Medieval Religion 4 (Woodbridge, UK, 1992), c. 418, p. 112.

⁶⁶ See David Nirenberg, "Conversion, Sex, and Segregation: Jews and Christians in Medieval Spain," *American Historical Review* 107/4 (2002): 1065–93.

terms) was a common trope of Christian writers, particularly in the context of war against them.⁶⁷ The majority of these accusations have to do with the rape of Christian women by Muslim men—something that undoubtedly did happen in wartime or in raids, as did the rape of Muslim women by Christian men, and the rape of women by members of their own religious group. A tenuous but nevertheless widespread knowledge of the Muslim custom of polygamy, especially the criticism of Muhammad’s multiple marriages, and of the permissibility of men’s having sex with their female slaves in Qur’anic law, no doubt contributed to this trope. However, claims that Saracens or Turks raped Christian boys or adult men were also current at the time of the First Crusade or shortly thereafter, and the denunciation of such practices in the canons, especially if we read them as symbolic, may be part of an attempt to draw the cultural line between Christians and Muslims. Raymond of Aguilers, who participated in the crusade in the entourage of Raymond of Saint-Gilles, count of Toulouse, for example, writes that the Turks (meaning the Seljuqs, whom the crusaders fought in Asia Minor) put both captured girls and boys in *prostibuli* (brothels).⁶⁸ Albert of Aachen reports that at the battle of Nicaea the Turks killed those fleeing the city, except for about two hundred “beautiful in face and youthful body” whom they took prisoner. He does not say that they were captured for sexual purposes, but the emphasis on beauty suggests this, as does a later passage in which both girls and boys are captured.⁶⁹ Albert’s account of the meeting of Peter the Hermit and Kerbogha during the siege of Antioch has the latter demand that the Christians send their young men without beards (“inberbis iuventus”) and virgin women (“puelle intacte”) as slaves, and threatens to put to death married women and bearded men.⁷⁰ Here the implication of sexual use is not quite as clear, as it might be intended to suggest young and therefore malleable slaves, but the reference to the sexual status rather than age of the women implies that both boys and girls may be intended for sexual service. In fact many of the young people on Peter’s crusade were enslaved, and we do not know how they were exploited. William of Adam, writing in the early fourteenth century (after the fall of Acre) went into some detail about the activity of Italian merchants in his own time in selling children, especially boys, to the Saracens for sexual purposes.⁷¹

⁶⁷ Not only Muslims, of course; such accusations could also be leveled against other Christians. See Walter the Chancellor’s account of the Eastern Christians of Antioch before 1115, although he is talking mostly about heterosexual activity: Walter the Chancellor, *Bella Antiochena* 1.Prologue.2, ed. Paul E. D. Riant, *Recueil des historiens des croisades: Historiens occidentaux*, 5 vols. (Paris, 1844–95), 5:81–82; *Walter the Chancellor’s the Antiochene Wars*, trans. Thomas S. Asbridge and Susan B. Edgington, *Crusade Texts in Translation* 4 (Aldershot, 1999), 78–79.

⁶⁸ Raymond of Aguilers, *Historia Francorum qui ceperunt Iherusalem* 18, *Recueil des Historiens de Croisades Historiens Occidentaux* 3 (Paris, 1866), 288. See also Sini Kangas, “Growing Up to Become a Crusader: The Next Generation,” in *Jerusalem the Golden: The Origins and Impact of the First Crusade*, ed. Susan B. Edgington and Luis García-Guijarro, *Outremer* 3 (Turnhout, 2014), 255–71, discussion at 263.

⁶⁹ Albert of Aachen, *Historia Ierosolimitana / History of the Journey to Jerusalem* 1.17 and 1.22, ed. and trans. Susan B. Edgington (Oxford, 2007), 36–37 and 42–43; Léan Ní Chléirigh, “The Crusaders and their Enemies: The Latin Terminology of Group Identity in Chronicles of the First Crusade” (PhD thesis, Trinity College Dublin, 2010), 236–37.

⁷⁰ Albert of Aachen, *Historia Ierosolimitana*, 4.44, 318–19.

⁷¹ William of Adam, *How to Defeat the Saracens*, ed. and trans. Giles Constable (Washington, DC, 2012), 28–33.

A letter purporting to come from the Byzantine emperor Alexios Komnenos and recruiting Westerners for a crusade, blamed Muslims for not only raping women but also raping, or at least engaging in sodomy with, men from boys up to old men and even bishops, with the implication that at least one bishop entered into it voluntarily.⁷² This text most often circulated together with copies of the important crusade chronicle *Historia Hierosolymitana* of Robert the Monk, and appears to have been written originally in Latin. It likely reflects Western attitudes more than Byzantine ones, although that does not necessarily mean it was not sent from Constantinople, as Peter Frankopan points out; there were plenty of Westerners there in the period leading up to the First Crusade, including Robert of Flanders himself, which is how Alexios became acquainted with him.⁷³ But most scholars believe it postdates the crusade. Einar Joranson suggests that it was part of an anti-Byzantine crusade recruiting campaign in 1106, and although some have doubts about the anti-Byzantine campaign, scholars generally agree on the date in the first decade of the twelfth century.⁷⁴ Robert the Monk's account of Urban II's call to crusade shares many details with the letter but says nothing about the rape of men (and only alludes to the rape of women).⁷⁵ Guibert of Nogent, however, writing sometime before 1109, knew the letter, and he does mention Saracen rape of men: "The execrable and profoundly intolerable crime of sodomy, which they committed against men of middle or low station, they also committed against a certain bishop, killing him."⁷⁶ Accusations like this indicate a particular concern about sodomy in the crusading context that led up to the Council of Nablus. Even if Alexios's letter is a forgery, it is one written in the relevant time period. The sensational claim that a bishop had died from being raped is very likely an invention, given that such a death would likely have been mentioned elsewhere. The two sources that mention it are not independent.

⁷² Translated in Boswell, *Christianity, Social Tolerance, and Homosexuality*, 368–69, and in *Robert the Monk's History of the First Crusade / Historia Iherosolimitana*, trans. Carol Sweetenham, Crusade Texts in Translation 11 (Aldershot, 2005), 219–22; Paul E. D. Riant, ed., *Alexi I Comneni Romanorum imperatoris ad Robertum I Flandriae comitem epistola spuria* (Geneva, 1879) and Heinrich Hagenmeyer, ed., *Epistulae et chartae ad historiam primi belli sacri spectantes: Die Kreuzzugsbriefe aus den Jahren 1088–1100* (Innsbruck, 1901; repr. Hildesheim, 1973), 129–36.

⁷³ Peter Frankopan, *The First Crusade: The Call from the East* (London, 2012), 60–61.

⁷⁴ Einar Joranson, "The Problem of the Spurious Letter of Emperor Alexios to the Count of Flanders," *American Historical Review* 55/4 (1950): 811–32; this conclusion is still upheld by Sweetenham, *Robert the Monk's History*, 217. See in addition Paul E. D. Riant, *Inventaire critique des lettres historiques des croisades*, 2 vols. (Paris, 1880), 1:71–89, and Peter Schreiner, "Der Brief des Alexios I. Komnenos an den Grafen Robert von Flandern und das Problem gefälschter byzantinischer Kaiserschreiben in den westlichen Quellen," in *Documenti medievali greci e latini: Studi comparativi; Atti del Seminario di Erice, 23–29 ottobre 1995*, ed. Giuseppe de Gregorio and Otto Kresten, Incontri di Studio 1 (Spoleto, 1998), 111–40; Nicholas Morton, *Encountering Islam on the First Crusade* (Cambridge, UK, 2016), 106.

⁷⁵ *Robert the Monk's History*, trans. Sweetenham, 80.

⁷⁶ Guibert of Nogent, *Dei gesta per Francos* 1.5, ed. R. B. C. Huygens, "Dei gesta per Francos" et cinq autres textes CCCM 127A (Turnhout, 1996), 102, English translation in Guibert of Nogent, *The Deeds of God through the Franks: A Translation of Guibert de Nogent's "Gesta Dei per Francos,"* trans. Robert Levine (Woodbridge, UK, 1997), 37. See discussion in Rubenstein, *Nebuchadnezzar's Dream*, 38; Elizabeth Lapina, *Warfare and the Miraculous in the Chronicles of the First Crusade* (University Park, PA, 2015), 117, arguing that Guibert in general associates Muslims with excessive sex with women as well as men.

The repercussions of the medieval encounter with the religious other may have led to the demonization of sodomy in the later Middle Ages, as indicated by its connection to blasphemy and heresy. The major cause célèbre involving same-sex practices was the trial of the Knights Templar in France beginning in 1307, in which many of the accused testified to having seen anal sex as part of the order’s initiation ritual or to having been told that it was acceptable between brothers, although they all denied having participated in it themselves. It is highly unlikely that this practice was part of the order’s ritual, although we should allow the possibility that same-sex relationships were in fact tolerated among the Templars, for the avoidance of scandal.⁷⁷ The fact that these confessions were elicited under torture means that it would be wrong to put weight on the confessions; the key point here is what the accused were asked to confess to. The main accusation was blasphemy, and scholars generally accept that it was a false one. The combination of blasphemy and sodomy points toward the connection between heresy and sodomy, used rhetorically to emphasize the evil and otherness of the accused, but there is also a connection to Islam, as the idol the Templars were alleged to worship was called Baphomet, one of the variations in the name of the prophet Mohammed in relatively uninformed Western sources.

Groups or individuals labeled by the church as heretical had been accused of deviant sexual behavior since the beginning of the Christian era—indeed, even early Christians themselves were accused by pagans. It was a handy and sometimes plausible accusation; since the church was the main disseminator of ideas about sexual morality, a challenge to the church could also be seen as a challenge to that morality. In thirteenth-century France *bougre*, derived from “Bulgarian” (the supposed source of the Cathar heresy) meant a heretic but may have come to mean someone who engaged in same-sex relations (hence the English “bugger”).⁷⁸ The term *ketzerei*, denoting heresy, was also used in Germany as a euphemism for sex between men, such that it is sometimes not possible to tell from the court records which offense someone is being accused of.⁷⁹ The man executed in Navarre around 1290 for “committing heresy with his body” was probably another example.⁸⁰ Tom Linkinen discusses the connection in England, which went both ways: accusations of “sodomitical acts” against Richard II may have had to do with heresy,⁸¹ but on the other hand John Wycliffe and the Lollards accused the orthodox church of promoting sodomy, perhaps metaphorically in Wycliffe’s case, but quite literally in the case of the Lollard *Twelve Conclusions*, which suggested that clerical celibacy promoted sodomy.⁸²

⁷⁷ Ruth Mazo Karras, “Knighthood, Compulsory Heterosexuality, and Sodomy,” in *The Boswell Thesis: Essays on Christianity, Social Tolerance, and Homosexuality*, ed. Mathew Kuefler (Chicago, 2006), 273–86, at 277–79.

⁷⁸ Boswell, *Christianity, Social Tolerance, and Homosexuality*, 284, suggests that it may have never had a specific sexual denotation but merely have been sufficiently vague to have been used to cover them.

⁷⁹ Helmut Puff, *Sodomy in Reformation Germany and Switzerland 1400–1600* (Chicago, 2003), 13–14.

⁸⁰ Katherine Crawford, *European Sexualities, 1400–1800* (Cambridge, UK, 2007), 156.

⁸¹ Tom Linkinen, *Same-Sex Sexuality in Later Medieval English Culture* (Amsterdam, 2015), 142. P. J. P. Goldberg, “John Rykener, Richard II and the Governance of London,” *Leeds Studies in English* New Series 45 (2014): 49–70, suggests that John Rykener is a stand-in for Richard II (67–69).

⁸² See Carolyn Dinshaw, *Getting Medieval: Sexualities and Communities, Pre- and Postmodern* (Durham, N.C., 1999), 65–68.

This connection of sodomy with religious otherness as it developed from the twelfth century was greatly reinforced by the encounter with Islam.

While the connection with heresy underscored the deviance of same-sex activity—and made the borrowing of an ecclesiastical category for the civic authorities to punish offenders all the more understandable—it was not the only factor in the development of a late medieval discourse around same-sex behavior as criminal. Nevertheless, the shift to the criminalization of same-sex activity could well have been triggered by the encounter with cultural and religious difference in the kingdom of Jerusalem in the twelfth century (it is perhaps not a coincidence that another place we find criminalization of this activity is in thirteenth-century Castile). The question of whether the Islamic societies of the Middle East had a more welcoming attitude toward same-sex behavior cannot be answered here, but as a very broad generalization medieval Islamic society was a more extreme case of what we also see within medieval Christianity, of same-sex love being important culturally while being objurgated in religious texts.⁸³ What is clear is that Western Europeans thought Muslims practiced it, and did not consider this a good thing.⁸⁴

Where we get good evidence about the actual prosecution of same-sex activity in medieval Europe is from the later Middle Ages, not in royal or, surprisingly, ecclesiastical courts but in urban ones.⁸⁵ Many towns, especially in Italy, legislated about sodomy, providing various sorts of punishment, including maiming and death, or more moderately fines or exile. Helmut Puff notes that German-speaking cities generally did not have specific antisodomy legislation, although they behaved as though they did, alluding on occasion to Roman law.⁸⁶ Lucca, Venice, and Florence created special legal structures in the fifteenth century to manage sodomy accusations. While this legislation was secular, it may be that it represented the adoption by secular authorities of the church's position on the sinfulness of sodomy as well as concerns about public order. There were still not huge numbers of prosecutions for same-sex activity in the late Middle Ages in most places; even the numerous accusations made to the Office of the Night in Florence studied by Michael Rocke were not prosecuted to the extent that the law provided.⁸⁷ But more survive in civic than in ecclesiastical records. This could be because churchmen who would have led investigations were complicit themselves; this did not, however, stop church officials from prosecuting opposite-sex behavior of which they must occasionally have been equally guilty. More important seems to be the increasing involvement of city governments in regulating sexual (and other moral) behavior of all kinds. The evidence we have of

⁸³ See for example J. W. Wright and Everett K. Rowson, eds., *Homoeroticism in Classical Arabic Literature* (New York, 1997); Kecia Ali, *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence* (London, 2006), 79–85.

⁸⁴ By contrast, there was remarkably little criticism of Jews for same-sex activity in Western Europe, although there were plenty of attacks for other things, including immoderate opposite-sex activity. As Kim M. Phillips, *Before Orientalism: Asian Peoples and Cultures in European Travel Writing, 1245–1510* (Philadelphia, 2014), 141, points out, accounts of sodomy were quite rare in reports of Western European travelers to East Asia and South Asia.

⁸⁵ Although see Marc Boone, "State Power and Illicit Sexuality: The Persecution of Sodomy in Late Medieval Bruges," *Journal of Medieval History* 22/2 (1996): 135–53.

⁸⁶ Puff, *Sodomy*, 27–28.

⁸⁷ Rocke, *Forbidden Friendships*, 61–65.

enforcement in late medieval urban courts may be due to better record survival in the fourteenth and fifteenth centuries than previously. However, prosecutions would not have been possible without the new legal apparatus set up at this time. That is another story, but it echoes to some extent the one told here, about the enforcement by secular authorities of a social order that mirrors the moral order. The fact that burning was often the punishment reflects the innovation of Nablus.

The focus of prosecution in the later Middle Ages remained on men rather than on women. In addition to Bennett’s list of reasons for this, another arises from the possible roots of these patterns in the crusading era. The great majority of the Western Christians who came east with the First Crusade were men. Some married local Christian women. There would have been day-to-day contacts of various social and commercial types with Muslims as well as with Eastern Christians, but the fact that the canons of Nablus assume that a “Sarracena” with whom a man has sex would be a slave is an indication of the largely hostile nature of the encounter in the early twelfth century.⁸⁸ Western Christian women were less likely to be in a position to be influenced by what were seen as depraved Eastern practices. It was men who were seen as likely to be tempted in a way that threatened the moral health of the community. There was no need, as there was a century later in the Orléans area, to create a parallel punishment structure for women as an afterthought.

This story is in some ways an unedifying one, which goes against the image of the medieval world from whose openness and diversity we can draw lessons. The lesson, if any, is this: that although the church was fairly consistent in preaching against same-sex sexual activity, as it was against all other varieties of nonreproductive sex, a hostility leading to persecution and potentially to painful and shameful death was not an inevitable product of this teaching but rather a result of specific historical circumstances. And one could say the same thing about hostility to Islam, which was not the inevitable result of a clash of civilizations but rather, something stirred up as a result of, or to justify, a fervor that had other causes. The combination of the two was potent, and had disastrous consequences for generations of Europeans and Middle Easterners. It stands as an example of how items from a shared cultural repertoire can be selected and deployed to suit specific strategies. And when French lawyers in the thirteenth century borrowed from laws that came from a different context, they may not have thought about the origins of these provisions. Recent scholarship on the Crusades has shown how close the connections were—familial, intellectual, as well as commercial—between Outremer and Western Europe. For the most part, Europe benefited from this exchange, but cultural contact can also bring with it repression; the colonial or protocolonial encounter can be toxic to the colonizers as well as the colonized.

⁸⁸ Summarizing the variety of nonhostile contacts, see Andrew D. Buck, “Settlement, Identity, and Memory in the Latin East: An Examination of the Term ‘Crusader States,’” *English Historical Review* 135 (2020): 573–604; for an example of a “Sarracena” in early Latin Antioch, see Andrew D. Buck, *The Principality of Antioch and its Frontiers in the Twelfth Century* (Woodbridge, UK, 2017), 182.